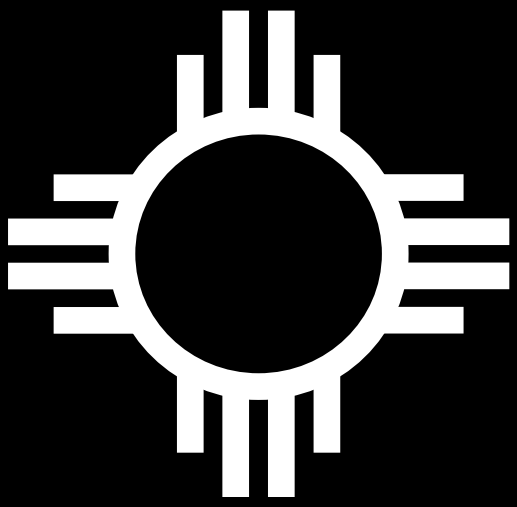
NEW MEXICO REGISTER



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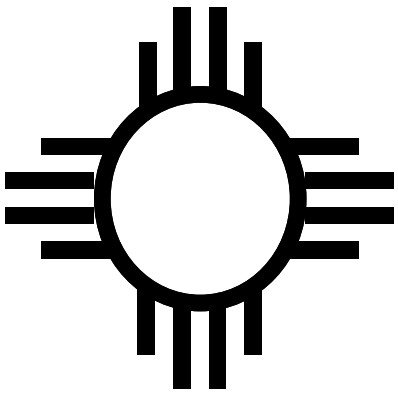

The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2008

New Mexico Register

Volume XIX, Number 22
December 1, 2008

Table of Contents

Notices of Rulemaking and Proposed Rules

Attorney General, Office of the
Notice of Proposed New Rules and Public Hearings . . . 1037
General Services Department
Property Control Division
Notice of Public Hearing . . . 1037
Oil Conservation Commission
Notice of Meeting and Public Hearing . . . 1037
Psychologist Examiners, Board of
Legal Notice: Public Rule Hearing and Regular Board Meeting . . . 1038
Public Education Department
Notice of Public Hearing . . . 1039
Public Records, Commission of
Historical Records Advisory Board
Notice of Regular Meeting and Notice of Rulemaking . . . 1039
Public Regulation Commission
Utility Division
Notice of Proposed Rulemaking (Regarding 17.5.410 NMAC) . . . 1040

Adopted Rules

Effective Date and Validity of Rule Filings

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

A=*Amended*, E=*Emergency*, N=*New*, R=*Repealed*, Rn=*Renumbered*

Agriculture, Department of
3.3.31 NMAC N Personal Income Taxes: Application and Certification Process for the Administration of the Water Conservation Tax Credit . . . 1043
3.4.18 NMAC N Corporate Income Taxes: Application and Certification Process for the Administration of the Water Conservation Tax Credit . . . 1044
Albuquerque-Bernalillo County Air Quality Control Board
20.11.3 NMAC A Transportation Conformity . . . 1046
Energy, Minerals and Natural Resources Department
Oil Conservation Division
19.15 NMAC, Parts 1- 15 R Title 19, Chapter 15, Parts 1 through 15 - Repealed . . . 1073
19.15.2 NMAC N General Provisions for Oil and Gas Operations . . . 1074
19.15.3 NMAC N Rulemaking . . . 1081
19.15.4 NMAC N Adjudication . . . 1083
19.15.5 NMAC N Enforcement and Compliance . . . 1089
19.15.6 NMAC N Tax Incentives . . . 1090
19.15.7 NMAC N Forms and Reports . . . 1094
19.15.8 NMAC N Financial Assurance . . . 1099
19.15.9 NMAC N Well Operator Provisions . . . 1101
19.15.10 NMAC N Safety . . . 1102
19.15.11 NMAC N Hydrogen Sulfide Gas . . . 1103
19.15.12 NMAC N Pools . . . 1106
19.15.13 NMAC N Compulsory Pooling . . . 1112
19.15.14 NMAC N Drilling Permits . . . 1114
19.15.15 NMAC N Well Spacing and Location . . . 1115

19.15.16 NMAC N Drilling and Production . . . 1119
19.15.18 NMAC N Production Operating Practices . . . 1123
19.15.19 NMAC N Natural Gas Production Operating Practice . . . 1126
19.15.20 NMAC N Oil Proration and Allocation . . . 1127
19.15.21 NMAC N Gas Proration and Allocation . . . 1131
19.15.22 NMAC N Hardship Gas Wells . . . 1137
19.15.23 NMAC N Off Lease Transport of Crude Oil or Contaminants . . . 1138
19.15.24 NMAC N Illegal Sale and Ratable Take . . . 1139
19.15.25 NMAC N Plugging and Abandonment of Wells . . . 1141
19.15.26 NMAC N Injection . . . 1142
19.15.29 NMAC N Release Notification . . . 1145
19.15.30 NMAC N Remediation . . . 1146
19.15.34 NMAC N Produced Water . . . 1151
19.15.35 NMAC N Waste Disposal . . . 1153
19.15.37 NMAC N Refining . . . 1156
19.15.39 NMAC N Special Rules . . . 1157
19.15.17 NMAC A Pits, Closed-loop Systems, Below-Grade Tanks and Sumps . . . 1158
19.15.36 NMAC A Surface Waste Management Facilities . . . 1166

Environmental Improvement Board

20.2.90 NMAC N Field Citations . . . 1178
11.5.1 NMAC A Occupational Health and Safety - General Provisions . . . 1180

Human Services Department

Medical Assistance Division

8.200.400 NMAC A Medicaid Eligibility - General Recipient Policies: General Medicaid Eligibility . . . 1181
8.285.400 NMAC Rn & A Medicaid Eligibility - Emergency Medical Services for Aliens (Category 085): Recipient Policies . . . 1183
8.285.500 NMAC Rn & A Medicaid Eligibility - Emergency Medical Services for Aliens (Category 085): Income and Resource Standards . . . 1184
8.285.600 NMAC Rn & A Medicaid Eligibility - Emergency Medical Services for Aliens (Category 085): Benefit Description . . . 1184

Racing Commission

15.2.5 NMAC A Horse Race - Rules of the Race . . . 1185

Real Estate Commission

16.61.3 NMAC R Real Estate Broker's License: Examination and Licensing Application Requirements . . . 1185
16.61.3 NMAC N Real Estate Broker's License: Examination and Licensing Application Requirements . . . 1185
16.61.1 NMAC A Real Estate Brokers: General Provisions . . . 1187
16.61.5 NMAC A Errors and Omissions Insurance . . . 1188
16.61.7 NMAC A Criminal Background Checks . . . 1189
16.61.9 NMAC A License Inactivation . . . 1189
16.61.11 NMAC A License Renewal . . . 1189
16.61.12 NMAC A License Suspension and Revocation . . . 1190
16.61.13 NMAC A Continuing Education Requirements . . . 1190
16.61.14 NMAC A Education and Training Fund . . . 1190
16.61.15 NMAC A Approval of Real Estate Courses, Sponsors, and Instructors . . . 1191
16.61.16 NMAC A Qualifying Broker: Affiliation and Responsibilities . . . 1194
16.61.17 NMAC A Associate Broker: Affiliation and Responsibilities . . . 1195
16.61.23 NMAC A Special Trust Accounts, Custodial Accounts, and Other Accounts Containing Funds of Third Parties . . . 1195
16.61.24 NMAC A Property Management . . . 1196
16.61.27 NMAC A Foreign Brokers . . . 1196
16.61.31 NMAC A Signage . . . 1197
16.61.36 NMAC A Complaints and Investigations . . . 1197

Secretary of State

1.10.12 NMAC A/E Absentee Voting . . . 1197
1.10.22 NMAC A/E Provisional Voting . . . 1198
1.10.23 NMAC A/E Procedures for Recounts, Audits, Rechecks and Contests . . . 1199

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Notices of Rulemaking and Proposed Rules

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL

OFFICE OF THE NEW MEXICO
ATTORNEY GENERAL
NOTICE OF PROPOSED NEW RULES
AND PUBLIC HEARINGS

Office of the Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504-1508
(505) 827-6000
www.nmag.gov

The Attorney General is proposing four new rules. The first new proposed rule addresses requirements and disclosures for automatic renewal of contracts. The second new proposed rule addresses disclosure requirements on the collection of time barred or old debt. The third new proposed rule addresses requirements of contracts to be provided in Spanish when a sale is negotiated in Spanish. The fourth new proposed rule addresses requirements for Motor Vehicle sales involving spot delivery. These rules are being promulgated by the authority vested in the Attorney General pursuant to the New Mexico Unfair Practices Act, NMSA 1978, Section 57- 12-13 (1967).

The proposed rules are available at the Office of the Attorney General located in the Paul Bardacke Attorney General Complex in Santa Fe located at 408 Galisteo Street, Consumer Protection Division, at the Attorney General's Office located in Albuquerque at 111 Lomas Blvd. NW, Suite 120 or in Las Cruces at 201 North Church Street, Suite 315. The proposed rules are also posted on the Office of the Attorney General's website and may be accessed, free of charge, from the following website:

www.nmag.gov/office/divisions/cp/ruleproposals

To request that a copy of the proposed rules be mailed to you, please submit your request in writing to:

Office of the Attorney General
Consumer Protection Division
Attention: Rebecca Branch
P.O. Drawer 1508
Santa Fe, NM 87504-1508

In your letter, please specify which proposed rule you are requesting. You may also request a copy of a proposed rule by calling the following telephone number:

1 (800) 678-1508

There is a $.25 copying charge per page for written and telephone requests for copies of the rules.

Any person who is or may be affected by these proposed rules and regulations may appear, testify and/or submit written comments.

Written comments concerning the proposed amendments to the rule may be submitted by mail to:

Office of the Attorney General
Consumer Protection Division
Attention: Rebecca Branch
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Testimony and written comments may also be submitted in person at hearings set for the proposed rules. The hearings will be held as follows:

Location:
New Mexico State Bar Center
Bigbee Auditorium
5121 Masthead NE
Albuquerque, NM 87109

Date and Time:

Monday, January 12, 2008

9:00 a.m. - 11:00 a.m. Automatic contract Renewals

11:00 a.m. - 1:00 p.m. collection of Time Barred Debt

2:30 p.m. - 4:30 p.m. requirement of Spanish language in written contract

Tuesday, January 13, 2008

9:00 a.m. Spot Delivery

The Office of the New Mexico Attorney General will accept written comments for consideration as provided above no later than February 13, 2009.

If you are an individual with a disability in need of a reasonable accommodation in order to participate at the hearing, please contact **Rebecca Branch** at (800) 678-1508. The Office of the Attorney General requests ten (10) business days advanced notice to provide any reasonable accommodations.

NEW MEXICO GENERAL SERVICES DEPARTMENT

PROPERTY CONTROL DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico General Services Department/ Property Control Division will hold a public hearing on 1.5.24 NMAC "Conduct on and Use of State Property". The Hearing will be held on Monday, December 15, 2008 at 9:00 a.m. in the Montoya Building Bid Room on the first floor, located at 1100 St. Francis Drive, Santa Fe, New Mexico 87505

The public hearing will be conducted to all persons who have an interest in occupying or obtaining access to State of New Mexico buildings under General Services Department, Property Control Divisions control.

A copy of the proposed rules can be obtained from:
Loraine Giron
1100 St. Francis Dr. Rm 2022
PO Box 6850
Santa Fe, NM 87502
(505) 827-2141

Please submit any written comments regarding the proposed rule to:

Loraine Giron
1100 St. Francis Dr. Rm 2022
PO Box 6850
Santa Fe, NM 87502
(505) 827-2141

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

NEW MEXICO OIL CONSERVATION COMMISSION

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

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice pursuant to law and Commission rules of the following meeting and public hearing to be held at 9:00 A.M. on **December 11, 2008**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, before the Oil Conservation

Commission. If additional time is needed, the hearing may continue at a later date announced by the Commission. 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 Division Administrator Florene Davidson at (505) 476-3458 or through the New Mexico Relay Network (1-800-659-1779) by **December 1, 2008**. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 24 hours preceding the meeting. Members of the public may obtain copies of the agenda by contacting Ms. Davidson at the phone number indicated above. Also, the agenda will be posted on the Oil Conservation Division website at www.emnrd.state.nm.us.

STATE OF NEW MEXICO TO:
All named parties and persons having any right, title, interest or claim in the following cases and notice to the public.

CASE 14255: This case concerns the proposed amendment of 19.15.39 NMAC to add two new sections setting out special provisions for Santa Fe County and the Galisteo Basin, which extends into portions of San Miguel and Sandoval Counties. Proposed section 19.15.39.9 NMAC requires operators to obtain the approval of the Oil Conservation Division (Division) for an exploration and development plan prior to drilling, re-entering or deepening a well in Santa Fe County or the Galisteo Basin, and requires the operator to renew the plan every five years. The operator will be required to operate the wells covered by the plan in accordance with the plan's requirements until the plan is specifically replaced by a special pool order. The proposed rule sets out the process for obtaining, amending, renewing and replacing exploration and development plans. Proposed section 19.15.39.10 NMAC sets out conditions that will be applied to applications for permits to drill, re-enter or deepen a well covered by an exploration and development plan. These conditions will apply unless the operator's approved exploration and development plan recognizes an exception.

Copies of the text of the application and proposed amendment are available from commission clerk Florene Davidson at (505) 476-3458 or from the Division's web site at http://www.emnrd.state.nm.us/ocd under "Announcements."

Any person recommending modifications to a proposed rule change shall, no later than **Monday, November 24, 2008**, file a notice of recommended modifications with Ms. Davidson including the text of the recommended modifications, an explanation of the modifications' impact, and the reasons for adopting the modifications. Written comments on the proposed amendment and pre-hearing statements must be received no later than 5:00 p.m. on **Wednesday, December 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, December 3, 2008**, file six sets of a pre-hearing statement with Ms. Davidson. 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. Written comments, pre-hearing statements and notices of recommended modifications may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505) 476-3462.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 17th day of November 2008.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Mark E. Fesmire, P.E.
Director, Oil Conservation Division

S E A L

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Psychologist Examiners will hold a Rule Hearing on January 9, 2008 and will convene at 8:30 am. Following the Rule Hearing the Board of Psychologist Examiners will convene a regular board meeting to adopt the rules and take care of regular business. The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Road, 2ND floor hearing room #1, Santa Fe, NM.

If you would like a copy of the proposed changes you may access the website at www.rld.state.nm.us after November 17, 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 December 15, 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 and 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, amplifier, qualified 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.

Marge Tomada, Administrator
PO Box 25101- Santa Fe, New Mexico 87504

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("PED") hereby gives notice that the PED will conduct a public hearing 10:00 A.M. to noon on January 07, 2009 at the office of the Educator Quality Division at 444 Galisteo, Suite A. in Santa Fe, New Mexico 87501.

NMAC	Chapter Name	Part Name	Proposed Action
6.60.3 NMAC	SCHOOL PERSONNEL - GENERAL PROVISIONS	Alternative Licensure	Amend
6.62.2 NMAC	SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ADMINISTRATORS	Licensure for Educational Administration Grades Pre K -12	Amend
6.63.3 NMAC	SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY SUPPORT PERSONNEL	Licensure for Instructional Support Providers Pre -K12 Not Covered in Other Rules	Amend
6.63.4 NMAC	SCHOOL PERSONNE L - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL	Licensure in Educational Diagnosis Pre K-12	Amend
6.63.6 NMAC	SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL	Licensure for School Counselors, Pre K-12	Amend
6.64.11 NMAC	SCHOOL PERSONNEL - COMPETENCIES FOR LICENSURE	TESOL Competencies	Amend
6.69.4 NMAC	SCHOOL PERSONNEL - PERFORMANCE	Performance Evaluation System Requirements for Teachers	Amend
6.60.4 NMAC	SCHOOL PERSONNEL - GENERAL PROVISIONS	Licensure Recipr ocity	Amend
6.60.6 NMAC	SCHOOL PERSONNEL - GENERAL PROVISIONS	Continuing Licensure	Amend
6.60.5 NMAC	SCHOOL PERSONNEL - GENERAL PROVISIONS	Competency Testing for Licensure	Amend
6.61.3 NMAC	SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCT ORS	Licensure in Middle Level Education	Amend

Interested individuals may testify at the public hearing or submit written comments to Ms. Flo Martinez, Executive Administrative Assistant, Licensure Bureau, Educator Quality Division, Public Education Department, 444 Galisteo, Suite A. Santa Fe, NM 87501, by email Florence.Martinez@state.nm.us or Fax: 505-827-4148. Written comments must be received no later than 5:00 PM on January 7, 2009. However, the submission of written comments as soon as possible is encouraged. Written comments must provide specific reasons for any suggested amendments or comments and include any proposed amendatory language.

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

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the meeting are asked to contact Ms. Martinez by 5:00 PM on December 29, 2008. The Department requests at least ten (10) days advance notice to provide special accommodations. If accommodation is not requested in advance we cannot guarantee the availability of accommodation on-site.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

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 New Mexico Historical Records Advisory Board has scheduled a regular meeting for Thursday, December 11, 2008 from 9:00 a.m. to 12:00 noon. The meeting will be held in the Commission Room of the New Mexico State Records Center & Archives, which is an accessible facility, at 1209 Camino Carlos Rey, Santa Fe, NM, 87507. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the 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.

NOTICE OF RULEMAKING

The New Mexico Historical Records Advisory Board may consider the following items of rulemaking at the meeting:

1.13.5 NMAC NEW MEXICO HISTORICAL RECORDS GRANT PROGRAM GUIDELINES

NEW MEXICO PUBLIC REGULATION COMMISSION
UTILITY DIVISION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE	**)**	
INVESTIGATION INTO COMPLIANCE	**)**	
BY ELECTRIC AND GAS UTILITIES AND	**)**	
RURAL ELECTRIC COOPERATIVES WITH	**)**	**Case No. 08-00011-UT**
THE DISCONNECTION NOTICE	**)**	
REQUIREMENTS OF 17.5.410 NMAC	**)**	
	)	

NOTICE OF PROPOSED RULEMAKING

NOTICE is hereby given that the New Mexico Public Regulation Commission ("NMPRC" or the "Commission") is commencing a rulemaking proceeding for the purpose of repealing and replacing rule 17.5.410 NMAC governing residential services by gas, electric and rural electric cooperatives. The proposed replacement rule would be promulgated under authority granted to the Commission by the New Mexico Constitution, Article XI, Section 2 (1996), and by the Legislature pursuant to NMSA 1978, Sections 8-8-4 and 8-8-15. Copies of the proposed repealer and proposed replacement rule are attached hereto as Attachment A and Attachment B.

1. On September 19, 2008, the Commission's Utility Division Staff filed a Motion to Initiate Rulemaking: The Petitioner requested the Commission to commence a rulemaking proceeding to repeal and replace rule 17.5.410 NMAC governing residential services by gas, electric and rural electric cooperatives. The proposed changes to rule 17.5.410 NMAC contained in the proposed replacement rule 17.5.410 NMAC include (1) new language and required forms of notice relating to the prohibition on discontinuance of utility service during the winter heating season set forth in NMSA 1978, Section 27-6-18.1; (2) revisions of several sections relating to discontinuance of services for nonpayment; (3) revisions to the section regarding methods of establishing acceptable credit rating; (4) revisions to the Medical Certification Form and the Financial Certification Form; and (5) other revisions made for the general purpose of updating, reorganizing and clarifying the current rule.

2. One of the proposed changes to 17.5.410 NMAC is the administration of the requirement currently found in 17.5.410.31(A)(5)(a)(iii) that seriously of terminally ill persons enter into a written settlement agreement or deferred payment program as one of the prerequisites for receiving protection against the discontinuance of utility service. The Commission is proposing to eliminate that requirement because it is inconsistent with the following provisions of NMSA 1978, Section 62-8-10:

Utility service shall not be discontinued to any residence where a seriously or chronically ill person is residing if the person responsible for the utility service charges does not have the financial resources to pay the charges and if a licensed physician, physician assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner certifies that discontinuance of service might endanger that person's health or life and the certificate is delivered to a manager or officer of the provider of the utility service at least two days prior to the due date of a billing for service. The commission shall provide by rule the procedure necessary to carry out this section.

During the pendency of this rulemaking proceeding, all utilities shall comply with the provisions of Section 62-8-10.

3. Any person wishing to comment on the proposed amendments may do so by submitting written comments no later than December 15, 2008. Any person wishing to respond to comments may do so by submitting written response comments no later than December 31, 2008. Comments suggesting changes to the rule amendments as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the draft rule shall be provided in legislative format.

4. All pleadings, including comments, shall bear the caption and case number contained at the top of this notice. Additional copies of the proposed replacement rule 17.5.410 NMAC can be obtained from, and comments on the proposed rule, shall be sent to:
Ronald X. Montoya, Bureau Chief
Records Division
Attention: Case No. 08-00011-UT
224 East Palace Avenue, Marian Hall
Santa Fe, New Mexico 87501
Telephone: (505) 827-6968

5. Copies of the proposed rule may be downloaded from the Commission's web site, www.nmprc.state.nm.us under "Proposed Rules".

6. A public hearing will begin at 9:30 a.m. on January 28, 2009 at the offices of the New Mexico Public Regulation Commission, PERA Building, 1120 Paseo de Peralta, 4th Floor Hearing Room, Santa Fe, New Mexico, to receive oral comment and to clarify or supplement the written comments. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding. Interested persons should contact the Commission to confirm the date, time and place of the hearing since hearings are occasionally rescheduled.

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

8. Pursuant to NMSA 1978, Section 8-8-15(B), this notice, including Attachment A and Attachment B shall be mailed at least sixty days prior to the hearing date to all persons who have made a written request for advance notice. Also pursuant to NMSA 1978, Section 8-8-15.B, this notice shall be published, without Attachments A and B in at least two newspapers of general circulation in the State and in the New Mexico Register.

9. Commission Rule 1.2.3.7(B) ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte Communications." In order to assure compliance with said rule, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date to should be February 18, 2009. The setting of the record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or responsive comments to the Commission's proposed rule or responses to any bench

requests. However, this action should not be interpreted as extending the time during which parties may file comments or responsive comments, or as allowing the filing of other documents in this case.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 13th day of November 2008.

NEW MEXICO PUBLIC REGULATION COMMISSION

_____

JASON MARKS, CHAIRMAN

_____

SANDY JONES, VICE CHAIRMAN

_____

DAVID W. KING, COMMISSIONER

_____

BEN R. LUJAN, COMMISSIONER

_____

CAROL K. SLOAN, COMMISSIONER

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

TITLE 3 TAXATION
CHAPTER 3 PERSONAL INCOME TAXES
PART 31 APPLICATION AND CERTIFICATION PROCESS FOR THE ADMINISTRATION OF THE WATER CONSERVATION TAX CREDIT

3.3.31.1 ISSUING AGENCY: New Mexico Department of Agriculture
[3.3.31.1 NMAC - N, 12/01/08]
[3190 South Espina, Las Cruces, New Mexico 88003-8005. Mailing address: MSC 3189, P.O. Box 30005, Las Cruces, New Mexico 88003-8005. Phone number: 575-646-3007]

3.3.31.2 SCOPE: 3.3.31 NMAC applies to the application and certification process for the administration of the water conservation tax credit.
[3.3.31.2 NMAC - N, 12/01/08]

3.3.31.3 STATUTORY AUTHORITY: Established under the authority of Sections 7-2-18.20 and 7-2A-22 NMSA 1978.
[3.3.31.3 NMAC - N, 12/01/08]

3.3.31.4 DURATION: January 1st, 2013.
[3.3.31.4 NMAC - N, 12/01/08]

3.3.31.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[3.3.31.5 NMAC - N, 12/01/08]

3.3.31.6 OBJECTIVE: To establish procedures and guidelines implementing and interpreting the provisions of the agricultural water conservation tax credit.
[3.3.31.6 NMAC - N, 12/01/08]

3.3.31.7 DEFINITIONS: As used in Sections 7-2-18.20 and 7-2A-22 NMSA 1978 and 3.3.31 NMAC.

A. "Agricultural water conservation tax credit" means the tax credit allowed by Sections 7-2-18.20 and 7-2A-22 NMSA 1978.

B. "Applicant" means an individual New Mexico taxpayer, as defined by New Mexico statute, or "applicant" means corporate taxpayer, as defined by New Mexico statute, who desires to have a district issue a certificate of eligibility for a qualified improvement in irrigation systems or water management methods. Applicant includes a partnership, limited liability corporation, or other form of pass-through entity, which may pass the credit provided in Sections 7-2-18.20 and 7-2A-22 NMSA 1978 through to its owners in proportion to their share of ownership.

C. "Application package" means the application documents an applicant submits to the district from which the applicant received the application package, to request a certificate of eligibility for an agricultural water conservation tax credit.

D. "Certificate of eligibility" means the document issued by the district to which the applicant submitted an application package which sets forth the amount and year of the claimed agricultural water conservation tax credit.

E. "Department" means the New Mexico taxation and revenue department.

F. "District" means one of the soil and water conservation districts in New Mexico.

G. "Eligible improvement in irrigation systems or water management methods" means an improvement as defined by Sections 7-2-18.20 (C) (1) through (3) NMSA 1978, or Sections 7-2A-22 (C) (1) through (3) NMSA 1978.

H. "Expense" means expenditures incurred and documented by an original or copy(s) of receipts or invoices for an improvement in irrigation systems or water management methods, which is submitted with the application package.

I. "Taxable year" means the calendar year or fiscal year as defined by Sections 7-2-2(Y) or 7-2A-2(O) NMSA 1978.

J. "Water conservation plan" means a written or typed document on 8½ inch by 11 inch paper detailing the amount of anticipated water conservation, and improvements in irrigation systems or water management method(s) which are designed to conserve water, reduce water consumption or the opportunity for ground water or surface water contamination.
[3.3.31.7 NMAC - N, 12/01/08]
[Refer to United States Department of Agriculture, Natural Resources Conservation Service publication, New Mexico Water Management Handbook, for suggestions on improvements in irrigation systems or water management methods.]

3.3.31.8 GENERAL PROVISIONS:

A. For the purposes of Section 7-2-18.20 NMSA 1978, an applicant may claim an agricultural water conservation tax credit for the taxable year in which the expenses are incurred if, in that year, the applicant owned or leased a water right appurtenant to the land on which an eligible improvement was made, and files an individual New Mexico income tax return for that year, is not a dependent of another individual, and does not take a tax credit for the same expense on any corporate tax return filed by the taxpayer.

B. For the purposes of Section 7-2A-22 NMSA 1978, an applicant may claim an agricultural water conservation tax credit for the taxable year in which the expenses are incurred if, in that year, the applicant owned or leased a water right appurtenant to the land on which an eligible improvement was made and files a New Mexico corporate income tax return for that year.

C. Only an applicant who on or after January 1, 2008, installs eligible improvements in irrigation systems or water management methods in New Mexico may receive a certificate of eligibility for an agricultural water conservation tax credit.

D. The agricultural water conservation tax credit shall not exceed $10,000 per application.

E. For expenses incurred from January 1, 2008, until December 31, 2008, the agricultural water conservation tax credit is an amount equal to 35 percent of the incurred expenses.

F. For expenses incurred on or after January 1, 2009, the agricultural water conservation tax credit is an amount equal to 50 percent of the incurred expenses.

G. If the amount of the agricultural water conservation tax credit the applicant claims exceeds the applicant's personal or corporate income tax, the applicant may carry the excess forward for not more than five consecutive tax years.

H. An applicant claiming the agricultural water conservation tax credit shall provide documentary evidence of the amount of water conserved during the period for which the credit is claimed if requested by the department.

I. Water conserved due to eligible improvements in irrigation systems or water management methods and for which an agricultural water conservation tax credit is claimed shall not be subject to abandonment or forfeiture, nor shall the conserved water be put to consumptive beneficial use.
[3.3.31.8 NMAC - N, 12/01/08]

3.3.31.9 APPLICATION PROCESS:

A. An applicant shall submit a water conservation plan to the district which encompasses the land upon which the applicant is claiming an eligible improvement in irrigation systems or water management methods has occurred. The water conservation plan may be submitted along with or prior to submitting an application package.

B. An applicant shall obtain an application package from the district which encompasses the land upon which the applicant is claiming an improvement has occurred.

C. An application package shall include a certificate of eligibility form and attachments as specified in the application package. The applicant shall submit the completed application package including the required attachments at the same time. An applicant shall submit one application package for each improvement in irrigation systems or water management methods. The applicant shall submit all material in the application package, including attachments, on 8½ inch by 11 inch paper.

D. An applicant shall submit a complete application package to the district from which the applicant obtained the application package.

E. A completed application package shall consist of the following information:

(1) applicant information, including the applicant's name, mailing address, telephone number, agricultural water conservation tax credit's taxable year or years;

(2) irrigation or water management equipment information, including project location with county and legal description, irrigation or water management equipment cost, irrigation systems or water management installation cost, and date the irrigation systems or water management equipment went into operation;

(3) proof of owned or leased water rights appurtenant to the land on which the improvements in irrigation systems or water management methods are made;

(4) evidence of purchase of irrigation or water management equipment and installation including receipts and invoices;

(5) calculation of the agricultural water conservation tax credit, calculated by the applicant, for the improvement in irrigation systems or water management methods;

(6) applicant agreement stating that all information in the application packet is true and correct to the best of the applicant's knowledge and the applicant has read the certification requirements of 3.3.31 NMAC.

[3.3.31.9 NMAC - N, 12/01/08]

3.3.31.10 WATER CONSERVATION PLAN AND APPLICATION REVIEW PROCESS:

A. Upon receipt of a water conservation plan, a district shall certify receipt of the water conservation plan and have 60 days from receipt to determine whether said water conservation plan is approved or disapproved.

B. A district considers application packages in the order received according to the day they are received, but not the time of day.

C. Upon receipt of an application package, a district shall certify receipt of the application package and have 60 days from receipt to approve or disapprove the application package.

D. A district reviews the application package to check the accuracy of the applicant's documentation, including whether the proposed improvements in irrigation systems or water management methods fall within the definition of eligible improvements in irrigation systems or water management methods, and determines whether the district issues a certificate of eligibility for the agricultural water conservation tax credit.

E. If a district finds the application package sufficient, the district issues the certificate of eligibility for a water conservation tax credit.

F. A district may disapprove an application. The district's disapproval letter shall state the reasons why the district disapproved the application. The applicant may resubmit the application package for the disapproved project. The district places the resubmitted application in the review schedule as if it were a new application.

[3.3.31.10 NMAC - N, 12/01/08]

3.3.31.11 CLAIMING THE TAX CREDIT: Upon receipt of a certificate of eligibility from a district, the applicant shall submit the certificate of eligibility, along with a completed personal or corporate income tax return form, and a completed agricultural water conservation tax credit claim form to the department.

[3.3.31.11 NMAC - N, 12/01/08]

[Refer to New Mexico Taxation and Revenue Department tax credit claim form RPD-41319]

HISTORY OF 3.3.31 NMAC: [RESERVED]

NEW MEXICO DEPARTMENT OF AGRICULTURE

TITLE 3 TAXATION
CHAPTER 4 CORPORATE INCOME TAXES
PART 18 APPLICATION AND CERTIFICATION PROCESS FOR THE ADMINISTRATION OF THE WATER CONSERVATION TAX CREDIT

3.4.18.1 ISSUING AGENCY: New Mexico Department of Agriculture

[3.4.18.1 NMAC - N, 12/01/08]

[3190 South Espina, Las Cruces, New Mexico 88003-8005. Mailing address: MSC 3189, P.O. Box 30005, Las Cruces, New Mexico 88003-8005. Phone number: 575-646-3007]

3.4.18.2 SCOPE: 3.4.18 NMAC applies to the application and certification process for the administration of the water conservation tax credit.

[3.4.18.2 NMAC - N, 12/01/08]

3.4.18.3 STATUTORY AUTHORITY: Established under the authority of Sections 7-2-18.20 and 7-2A-22 NMSA 1978.

[3.4.18.3 NMAC - N, 12/01/08]

3.4.18.4 DURATION: January 1st, 2013.

[3.4.18.4 NMAC - N, 12/01/08]

3.4.18.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.

[3.4.18.5 NMAC - N, 12/01/08]

3.4.18.6 OBJECTIVE: To establish procedures and guidelines implementing and interpreting the provisions of the agricultural water conservation tax credit.

[3.4.18.6 NMAC - N, 12/01/08]

3.4.18.7 DEFINITIONS: As used in Sections 7-2-18.20 and 7-2A-22 NMSA 1978 and 3.4.18 NMAC.

A. "Agricultural water conservation tax credit" means the tax credit allowed by Sections 7-2-18.20 and 7-2A-22 NMSA 1978.

B. "Applicant" means an individual New Mexico taxpayer, as defined by New Mexico statute, or "applicant" means corporate taxpayer, as defined by New Mexico statute, who desires to have a district issue a certificate of eligibility for a qualified improvement in irrigation systems or water management methods. Applicant includes a partnership, limited liability corporation, or other form of pass-through enti-

ty, which may pass the credit provided in Sections 7-2-18.20 and 7-2A-22 NMSA 1978 through to its owners in proportion to their share of ownership.

C. "Application package" means the application documents an applicant submits to the district from which the applicant received the application package, to request a certificate of eligibility for an agricultural water conservation tax credit.

D. "Certificate of eligibility" means the document issued by the district to which the applicant submitted an application package which sets forth the amount and year of the claimed agricultural water conservation tax credit.

E. "Department" means the New Mexico taxation and revenue department.

F. "District" means one of the soil and water conservation districts in New Mexico.

G. "Eligible improvement in irrigation systems or water management methods" means an improvement as defined by Sections 7-2-18.20 (C) (1) through (3) NMSA 1978, or Sections 7-2A-22 (C) (1) through (3) NMSA 1978.

H. "Expense" means expenditures incurred and documented by an original or copy(s) of receipts or invoices for an improvement in irrigation systems or water management methods, which is submitted with the application package.

I. "Taxable year" means the calendar year or fiscal year as defined by Sections 7-2-2(Y) or 7-2A-2(O) NMSA 1978.

J. "Water conservation plan" means a written or typed document on 8½ inch by 11 inch paper detailing the amount of anticipated water conservation, and improvements in irrigation systems or water management method(s) which are designed to conserve water, reduce water consumption or the opportunity for ground water or surface water contamination.

[3.4.18.7 NMAC - N, 12/01/08]

[Refer to United States Department of Agriculture, Natural Resources Conservation Service publication, New Mexico Water Management Handbook, for suggestions on improvements in irrigation systems or water management methods.]

3.4.18.8 GENERAL PROVISIONS:

A. For the purposes of Section 7-2-18.20 NMSA 1978, an applicant may claim an agricultural water conservation tax credit for the taxable year in which the expenses are incurred if, in that year, the applicant owned or leased a water right appurtenant to the land on which an eligible improvement was made, and files an individual New Mexico income tax return for that year, is not a dependent of another individual, and does not take a tax credit for the same expense on any corporate tax return filed by the taxpayer.

B. For the purposes of Section 7-2A-22 NMSA 1978, an applicant may claim an agricultural water conservation tax credit for the taxable year in which the expenses are incurred if, in that year, the applicant owned or leased a water right appurtenant to the land on which an eligible improvement was made and files a New Mexico corporate income tax return for that year.

C. Only an applicant who on or after January 1, 2008, installs eligible improvements in irrigation systems or water management methods in New Mexico may receive a certificate of eligibility for an agricultural water conservation tax credit.

D. The agricultural water conservation tax credit shall not exceed $10,000 per application.

E. For expenses incurred from January 1, 2008, until December 31, 2008, the agricultural water conservation tax credit is an amount equal to 35 percent of the incurred expenses.

F. For expenses incurred on or after January 1, 2009, the agricultural water conservation tax credit is an amount equal to 50 percent of the incurred expenses.

G. If the amount of the agricultural water conservation tax credit the applicant claims exceeds the applicant's personal or corporate income tax, the applicant may carry the excess forward for not more than five consecutive tax years.

H. An applicant claiming the agricultural water conservation tax credit shall provide documentary evidence of the amount of water conserved during the period for which the credit is claimed if requested by the department.

I. Water conserved due to eligible improvements in irrigation systems or water management methods and for which an agricultural water conservation tax credit is claimed shall not be subject to abandonment or forfeiture, nor shall the conserved water be put to consumptive beneficial use.

[3.4.18.8 NMAC - N, 12/01/08]

3.4.18.9 APPLICATION PROCESS:

A. An applicant shall submit a water conservation plan to the district which encompasses the land upon which the applicant is claiming an eligible improvement in irrigation systems or water management methods has occurred. The water conservation plan may be submitted along with or prior to submitting an application package.

B. An applicant shall obtain an application package from the district which encompasses the land upon which the applicant is claiming an improvement has occurred.

C. An application package shall include a certificate of eligibility form and attachments as specified in the application package. The applicant shall submit the completed application package including the required attachments at the same time. An applicant shall submit one application package for each improvement in irrigation systems or water management methods. The applicant shall submit all material in the application package, including attachments, on 8½ inch by 11 inch paper.

D. An applicant shall submit a complete application package to the district from which the applicant obtained the application package.

E. A completed application package shall consist of the following information:

(1) applicant information, including the applicant's name, mailing address, telephone number, agricultural water conservation tax credit's taxable year or years;

(2) irrigation or water management equipment information, including project location with county and legal description, irrigation or water management equipment cost, irrigation systems or water management installation cost, and date the irrigation systems or water management equipment went into operation;

(3) proof of owned or leased water rights appurtenant to the land on which the improvements in irrigation systems or water management methods are made;

(4) evidence of purchase of irrigation or water management equipment and installation including receipts and invoices;

(5) calculation of the agricultural water conservation tax credit, calculated by the applicant, for the improvement in irrigation systems or water management methods;

(6) applicant agreement stating that all information in the application packet is true and correct to the best of the applicant's knowledge and the applicant has read the certification requirements of 3.4.18 NMAC.

[3.4.18.9 NMAC - N, 12/01/08]

3.4.18.10 WATER CONSERVATION PLAN AND APPLICATION REVIEW PROCESS:

A. Upon receipt of a water conservation plan, a district shall certify receipt of the water conservation plan and have 60 days from receipt to determine whether said water conservation plan is

approved or disapproved.

B. A district considers application packages in the order received according to the day they are received, but not the time of day.

C. Upon receipt of an application package, a district shall certify receipt of the application package and have 60 days from receipt to approve or disapprove the application package.

D. A district reviews the application package to check the accuracy of the applicant's documentation, including whether the proposed improvements in irrigation systems or water management methods fall within the definition of eligible improvements in irrigation systems or water management methods, and determines whether the district issues a certificate of eligibility for the agricultural water conservation tax credit.

E. If a district finds the application package sufficient, the district issues the certificate of eligibility for a water conservation tax credit.

F. A district may disapprove an application. The district's disapproval letter shall state the reasons why the district disapproved the application. The applicant may resubmit the application package for the disapproved project. The district places the resubmitted application in the review schedule as if it were a new application.

[3.4.18.10 NMAC - N, 12/01/08]

3.4.18.11 CLAIMING THE TAX CREDIT: Upon receipt of a certificate of eligibility from a district, the applicant shall submit the certificate of eligibility, along with a completed personal or corporate income tax return form, and a completed agricultural water conservation tax credit claim form to the department.

[3.4.18.11 NMAC - N, 12/01/08]

[Refer to New Mexico Taxation and Revenue Department tax credit claim form RPD-41319]

HISTORY OF 3.4.18 NMAC: [RESERVED]

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.3 NMAC, Sections 1, 2, 7, 201-203, 206, 207, 211-213, 215-224, and 227. These regulatory changes to 20.11.3 NMAC were made to address requirements stipulated by EPA in their publication on January 24, 2008, of the *Transportation Conformity Rule Amendments To Implement Provisions Contained in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA-LU); Final Rule*.

20.11.3.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) [~~768-2600~~] 768-2601.

[7/1/98; 20.11.3.1 NMAC - Rn, 20 NMAC 11.03.I.1, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.2 SCOPE:

A. Action applicability:

(1) Except as provided for in Subsection C of 20.11.3.2 NMAC or 20.11.3.223 NMAC, conformity determinations are required for:

(a) the adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the metropolitan planning organization (MPO) or the United States department of transportation (DOT);

(b) the adoption, acceptance, approval or support of transportation improvement programs (TIPs) and TIP amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the MPO or DOT; and

(c) the approval, funding or implementation of federal highway administration/federal transit administration (FHWA/FTA) projects.

(2) Conformity determinations are not required under 20.11.3 NMAC for individual projects that are not FHWA/FTA projects. However, 20.11.3.218 NMAC applies to such projects if they are regionally significant.

B. Geographic applicability: This transportation conformity regulation is an Albuquerque-Bernalillo county air quality control board (AQCB) regulation for Bernalillo county and is included in the state implementation plan (SIP) revision pertaining to transportation conformity for Bernalillo county. The provisions of 20.11.3 NMAC shall apply to the area within Bernalillo county for which the area is designated nonattainment or has a maintenance plan for transportation-related criteria pollutants, and shall not apply to Indian lands over which the [~~Albuquerque-Bernalillo county air quality control board~~] AQCB lacks jurisdiction, except that any FHWA/FTA project on Indian land that uses funds received from the FHWA or FTA or receives a federal permit must comply with 20.11.3 NMAC.

(1) The provisions of 20.11.3 NMAC apply with respect to emissions of the following criteria pollutants: ozone (O_3), carbon monoxide (CO), nitrogen dioxide (NO_2), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$).

(2) The provisions of 20.11.3 NMAC apply with respect to emissions of the following precursor pollutants:

(a) volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in ozone areas;

(b) NO_x in NO_2 areas; [~~and~~]

(c) VOC [~~and/or~~] and NO_x in PM_{10} areas if the environmental protection agency (EPA) regional administrator or the director of the air agency has made a finding that transportation-related emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

(d) NO_x in $PM_{2.5}$ areas, unless both the EPA regional administrator and the director of the state air agency have made a finding that transportation-related emissions of NO_x within the nonattainment area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or the applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

(e) VOC, sulfur dioxide (SO_2) and ammonia (NH_3) in $PM_{2.5}$ areas either if the EPA regional administrator or the director of the state air agency has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contrib-

utor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of 20.11.3 NMAC apply to $PM_{2.5}$ nonattainment and maintenance areas with respect to $PM_{2.5}$ from re-entrained road dust if the EPA regional administrator or the director of the air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

(4) The provisions of 20.11.3 NMAC apply to maintenance areas for [~~20 years from the date the EPA approves the area's request under section 107(d) of the Clean Air Act (CAA) for redesignation to attainment,~~] through the last year of a maintenance area's approved CAA Section 175A(b) maintenance plan, unless the applicable implementation plan specifies that the provisions of 20.11.3 NMAC shall apply for more than 20 years.

C. Limitations: In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to 20.11.3. NMAC, a currently conforming transportation plan and TIP shall be in place at the time of project approval as described in 20.11.3.211 NMAC, except as provided by Subsection B of 20.11.3.211 NMAC.

D. Grace period for new nonattainment areas: For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM_{10}, $PM_{2.5}$ or NO_2 since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of 20.11.3. NMAC shall not apply with respect to that NAAQS for 12 months following the effective date of final designation to nonattainment for each NAAQS for such pollutant.

[7/1/98; 20.11.3.2 NMAC - Rn, 20 NMAC 11.03.I.2, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.7 DEFINITIONS: Terms used but not defined in 20.11.3 NMAC shall have the meaning given to them by the CAA, Titles 23 and 49 U.S.C., other EPA regulations, or other DOT regulations, in that order of priority. In addition to the definitions in this Section, 20.11.3.7 NMAC, the definitions in 20.11.1 NMAC shall apply unless there is a conflict between definitions, in which case the definition in 20.11.3 NMAC shall govern.

A. "1-hour ozone NAAQS" means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9.

B. "8-hour ozone NAAQS" means the 8-hour ozone national ambient air quality standard codified at 40 CFR 50.10.

C. "Air agency" means the air quality division (AQD) of the city of Albuquerque environmental health department (EHD). The EHD, or its successor agency or authority, as represented by the department director or his designee, is the lead air quality planning agency for Albuquerque-Bernalillo county nonattainment/ maintenance areas. The EHD serves as staff to the AQCB and is responsible for administering and enforcing AQCB regulations.

D. [~~"Air quality credit"~~ ~~means an air pollution emissions reduction benefit specifically identified by the transportation conformity technical committee (TCTC) that is attributable to a proposed transportation control measure (TCM) or land use measure (LUM) described in the TIP, the MTP or both, for the purpose of reducing motor vehicle air pollutants in order to achieve conformity. Air quality credits shall not have been used to establish existing motor vehicle emission budgets (MVEBs).~~] [Reserved]

E. "Albuquerque metropolitan planning area (AMPA)" means the portion of New Mexico state planning and development district 3 that comprises the area for which federal transportation funding allocated for areas of a 200,000 or greater population is expended. The AMPA is described in the MPO's most recent transportation planning documents.

F. "Applicable implementation plan" is defined in Section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

G. "CAA" means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

H. "Cause or contribute to a new violation" for a project means:

(1) to cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question if the project were not implemented; or

(2) to contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such an area.

I. "Clean data" means air quality monitoring data determined by EPA to meet the requirements of 40 CFR Part 58 that indicate attainment of the national ambient air quality standard.

J. "Conformity analysis" means any regional emissions analysis or localized hot-spot computer modeling assessments or any other analyses, which serve as the basis for the conformity determination.

K. "Conformity determination" means the demonstration of consistency with motor vehicle emissions budgets or with the appropriate interim emissions test identified at 20.11.3.215 NMAC for each pollutant and precursor identified in the applicable SIP. The conformity determination is the affirmative written documentation declaring conformity with the applicable implementation plan, which is submitted to FHWA and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities shall not:

(1) cause or contribute to any new violations of any standard in any area;

(2) increase the frequency or severity of any existing violation of any standard in any area; or

(3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

L. "Consultation" means the process by which the affected agencies identified in 20.11.3.202 NMAC confer with each other, provide to the agencies all relevant information needed for meaningful input and, prior to taking any action, consider the views of the other agencies and (except with respect to those actions for which only notification is required and those actions subject to Subsection C of 20.11.3.202 NMAC and Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC) respond in writing to substantive written comments in a timely manner prior to any final decision on such

action.

M. "Control strategy implementation plan revision" means a revision to the implementation plan that contains specific strategies for controlling emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA Sections 172 (c) , 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A) and 189(d); Sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment).

N. "Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

O. "Design scope" or "scope" means the design aspects that shall affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

P. "Donut areas" means geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

Q. "DOT" means the United States department of transportation.

R. "EPA" means the United States environmental protection agency.

S. "FHWA" means the federal highway administration of the DOT.

T. "FHWA/FTA project" means any highway or transit project that is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass transit program, or requires federal highway administration (FHWA) or federal transit administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

U. "Fiscally constrained" means, consistent with DOT's metropolitan transportation planning regulations at 23 CFR Part 450.

V. "Forecast period" means, with respect to a transportation plan, the time period covered by the transportation plan pursuant to 23 CFR Part 450.

W. "FTA" means the federal transit administration of the DOT.

X. "Highway project" means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Y. "Horizon year" means a year for which the transportation plan describes the envisioned transportation system according to 20.11.3.203 NMAC.

Z. "Hot-spot analysis" means an estimation of likely future localized CO, [~~and~~] PM_{10} and $PM_{2.5}$ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

AA. "Increase the frequency or severity" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed [~~and/or~~] or would otherwise exist during the future period in question if the project were not implemented.

BB. "Isolated rural nonattainment and maintenance areas" mean areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas.

CC. [~~"Land use measure (LUM)" means a land use action, set of land use actions or a land use plan specifically identified in the TIP or the MTP or both and that the MPO uses as the basis for air quality credits used to achieve air quality conformity. A LUM is an activity adopted as an ordinance by a municipal government, county government or other entity empowered under the laws of the state of New Mexico to adopt land use actions and which may include, but not be limited to, planning and platting actions, subdivisions of land, zoning actions or annexation/zoning actions. A LUM may be incorporated into the applicable implementation plan. The interagency consultation procedure shall be utilized to clarify any issues related to this definition.~~] [Reserved]

DD. "Lapse" means that the conformity determination for a transportation plan or a TIP has expired, and thus there is no currently conforming transportation plan and TIP.

EE. "Limited maintenance plan" means a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area shall have a design value that is significantly below a given NAAQS, and it shall be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

FF. "Local publicly-owned transit operator" means the current transit operator, the city of Albuquerque.

GG. "Maintenance area" means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

HH. "Maintenance plan" means an implementation plan under Section 175A of the CAA, as amended.

II. "Metropolitan planning organization (MPO)" means the policy board of an organization [~~designated as being responsible, together with the state DOT, for conducting the continuing, cooperative and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making.~~] created as a result of the designation process in 23 U.S.C. 134(d).

JJ. "Mid-region council of governments (MRCOG)" means the association of local governments within New Mexico state planning and development district 3 (Bernalillo, Sandoval, Torrance and Valencia counties) that is designated by the governor of New Mexico, in consultation with the elected officials of the area, as the MPO for the Albuquerque metropolitan planning area.

KK. "Milestone" has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above ozone

nonattainment areas and PM_{10} nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date when that level shall be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

LL. "Motor vehicle emissions budget (MVEB)" means the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

MM. "National ambient air quality standards (NAAQS)" are those standards established pursuant to Section 109 of the CAA.

NN. "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

OO. "NEPA process completion" means, with respect to the FHWA and the FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a finding of no significant impact or to issue a record of decision on a final environmental impact statement under NEPA.

PP. "Nonattainment area" means any geographic region of the United States that has been designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

QQ. "Project" means a highway project or a transit project.

RR. "Protective finding" means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirement relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

SS. "Public involvement committee (PIC)" means the permanent advisory committee established by the MRCOG to provide proactive public input to the transportation planning process.

TT. "Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws" means any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or federal transit laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers or contractors or entities that are only paid for services or products created by their own employees.

UU. "Regionally significant project" means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc. or transportation terminals) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

VV. "Safety margin" means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment or maintenance.

WW. "Standard" means a national ambient air quality standard.

XX. "State implementation plan (SIP)" (see applicable implementation plan).

YY. "State DOT" means the New Mexico department of transportation or its successor agency or authority, as represented by the department secretary or his designee.

ZZ. "Title 23 U.S.C." means Title 23 of the United States Code.

AAA. "Transit" is mass transportation by bus, rail or other conveyance that provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

BBB. "Transit project" means an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules or fares and may consist of several phases. For analytical purposes, a transit project shall be defined inclusively enough to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

CCC. "Transportation conformity technical committee (TCTC)" means the group that provides interagency consultation and consists of transportation, planning and air quality staff of the MPO, local government staff, staff from the state DOT, EPA, FHWA, FTA, and staff from the air agency, and that is responsible for evaluating and establishing the assumptions and circumstances for the application of transportation and air quality models.

DDD. "Transportation control measure (TCM)" means any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA Section 176(c)(8), that is either one of the types listed in Section 108 of the CAA, or any other measure [~~used as the basis for air quality credits to achieve conformity and has the purpose of reducing~~] that reduces emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. [~~A proposed TCM shall be identified in the TIP or the MTP or both.~~] Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based and maintenance-based measures that control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of 20.11.3 NMAC.

EEE. "Transportation improvement program (TIP)" means a [~~staged, multiyear, intermodal program of transportation projects covering the AMPA that is consistent with the metropolitan transportation plan (MTP) and developed pursuant to 23 CFR Part 450.~~] transportation improvement program developed by a metropolitan planning organization under 23 U.S.C. 134(j).

FFF. "Transportation plan" means the official 20-year fiscally constrained intermodal metropolitan transportation plan (MTP) that is developed for the metropolitan planning area through the metropolitan planning process, pursuant to 23 CFR Part 450.

GGG. "Transportation project" is a highway project or a transit project.

HHH. "Written commitment" means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

III. Acronyms

(1) **AMPA**-Albuquerque metropolitan planning area

(2) **AQCB**-Albuquerque-Bernalillo county air quality control board

(3) **CAA**-Clean Air Act, as amended

(4) **CFR**-code of federal regulations

(5) **CO**-carbon monoxide

(6) **DOT**-U.S. department of transportation

(7) **EHD**-Albuquerque environmental health department

(8) **EPA**-U.S. environmental protection agency

(9) **FHWA**-federal highway administration, DOT

(10) **FTA**-federal transit administration, DOT

(11) **MPO**-metropolitan planning organization

(12) **MRCOG**-mid-region council of governments

(13) **MTB**-metropolitan transportation board

(14) **MTP**-metropolitan transportation plan

(15) **MVEB**-motor vehicle emissions budget

(16) **NAAQS**-national ambient air quality standards

(17) **NEPA**-National Environmental Policy Act

(18) NO_x -oxides of nitrogen

(19) **PIC**-public involvement committee

(20) $PM_{2.5}$-particulate matter less than or equal to 2.5 micrometers in diameter

(21) PM_{10}-particulate matter less than or equal to 10 micrometers in diameter

(22) **SIP**-state implementation plan (applicable implementation plan)

(23) **State DOT**-New Mexico department of transportation

(24) **STIP**-state transportation improvement program

(25) **TCC**-transportation coordinating committee

(26) **TCM**-transportation control measure

(27) **TCTC**-transportation conformity technical committee

(28) **TIP**-transportation improvement program

(29) **VOC**-volatile organic compound

(30) **VMT**-vehicle miles traveled

[7/1/98; 20.11.3.7 NMAC - Rn, 20 NMAC 11.03.I.7, & A, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.201 FREQUENCY OF CONFORMITY DETERMINATIONS:

A. Conformity determinations and conformity redetermination for transportation plans, TIPs and FHWA/FTA projects shall be made according to the requirements of 20.11.3.201 NMAC and the applicable implementation plan.

B. Frequency of conformity determinations for transportation plans:

(1) Each new transportation plan shall be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan [~~revisions~~] amendments shall be found to conform before the transportation plan [~~revisions~~] amendments are approved by the MPO or accepted by DOT, unless the [~~revision~~] amendment merely adds or deletes exempt projects listed in 20.11.3.223 NMAC or 20.11.3.224 NMAC [~~and has been made in accordance with the notification provisions of Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC~~]. The conformity determination shall be based on the transportation plan and the [~~revision~~] amendment taken as a whole.

(3) The MPO and DOT shall determine the conformity of the transportation plan (including a new regional emissions analysis) no less frequently than every [~~three~~] four years. If more than [~~three~~] four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, a 12-month grace period will be implemented as described in Subsection F of 20.11.3.201 NMAC. At the end of this 12-month grace period, the existing conformity determination shall lapse.

C. Frequency of conformity determinations for transportation improvement programs:

(1) A new TIP shall be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in 20.11.3.223 NMAC or 20.11.3.224 NMAC and has been made in accordance with the notification provisions of Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

(3) The MPO and DOT shall determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every [~~three~~] four years. If more than [~~three~~] four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, a 12-month grace period will be implemented as described in Subsection F of 20.11.3.201 NMAC. At the end of this 12-month grace period, the existing conformity determination shall lapse.

[~~(4) After an MPO adopts a new or revised transportation plan, conformity of the TIP shall be re-determined by the MPO and DOT within six months from the date of DOT's conformity determination for the transportation plan, unless the new or revised plan merely adds or deletes exempt projects listed in 20.11.3.223 NMAC and 20.11.3.224 NMAC and has been made in accordance with the notification provisions of Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC. Otherwise, the existing conformity determination for the TIP shall lapse.~~]

D. Projects: FHWA/FTA projects shall be found to conform before they are adopted, accepted, approved or funded. Conformity shall be re-determined for any FHWA/FTA project if one of the following occurs: a significant change in the project's design concept and scope; three years have elapsed since the most recent major step to advance the project; or initiation of a supplemental environmental document for air quality purposes. Major steps include NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; and, construction (including federal approval of plans, specifications and estimates).

E. Triggers for transportation plan and TIP conformity determinations: Conformity of existing transportation plans and TIPs shall be re-determined within [~~18 months~~] two years of the following, or after a 12-month grace period (as described in Subsection F of 20.11.3.201 NMAC) the existing conformity determination shall lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT.

(1) The effective date of EPA's finding that motor vehicle emission budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to Subsection E of 20.11.3.215 NMAC and can be used for transportation conformity purposes.

(2) The effective date of EPA approval of a control strategy implementation plan revision or maintenance plan that establishes or revises a motor vehicle emissions budget if that budget has not yet been used in a conformity determination prior to approval.

(3) The effective date of EPA promulgation of an implementation plan that establishes or revises a motor vehicle emissions budget or adds, deletes or changes TCMs.

F. Lapse grace period. During the 12-month grace period referenced in Paragraph (3) of Subsection B of 20.11.3.201 NMAC, Paragraph (3) of

Subsection C of 20.11.3.210 NMAC, and Subsection E of 20.11.3.210 NMAC, a project may be found to conform according to the requirements of 20.11.3 NMAC:

(1) the project is included in the currently conforming transportation plan and TIP (or regional emissions analysis); or

(2) the project is included in the most recent conforming transportation plan and TIP (or regional emissions analysis).

[7/1/98; 20.11.3.201 NMAC - Rn, 20NMAC 11.03.II.2, & A, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.202 CONSULTATION:

A. General: Transportation plans and programs shall be in conformity with the applicable implementation plan (SIP) for the nonattainment/maintenance area of Bernalillo county. The MRCOG, as the MPO, is responsible for conducting the air quality transportation conformity analyses for all of Bernalillo county. The applicable plans and programs are the TIP and the MTP. The document serving to demonstrate conformity is the transportation/air quality conformity finding. 20.11.3.202 NMAC provides procedures for interagency consultation (federal, state and local) and resolution of conflicts. Such consultation procedures shall be undertaken by the MPO, state DOT and DOT with the air agency and EPA before making conformity determinations and by the air agency and EPA with the MPO, state DOT and DOT in developing applicable implementation plan revisions.

B. Interagency consultation procedures: General factors: The affected agencies shall participate in an interagency consultation process to assure that proposed transportation investments conform with the applicable implementation plan developed pursuant to the CAA. The affected agencies shall participate in a consultation process during the development of the transportation-related elements in the applicable SIP (i.e. TCMs, the MTP, and the TIP under 23 CFR Section 450.314 and 49 CFR Section 613.100), any significant revisions to the preceding documents and all conformity determinations required by 20.11.3 NMAC.

(1) The affected agencies acting in consultation include: EHD; EPA; FHWA; FTA; MPO; state DOT; local publicly-owned transit operator; appropriate local government transportation agencies and land use planning agencies (e.g. city of Albuquerque and Bernalillo county planning departments); and other federal and state agencies as appropriate.

(2) Each lead agency in the consultation process required under Subsection D of 20.11.3.202 NMAC (i.e. the agency responsible for preparing the final document subject to the interagency consultation process) shall provide reasonable opportunity for consultation with the affected agencies identified above. The lead agency shall provide to the affected agencies all information needed for meaningful input and shall consider the views of each agency and respond in writing to substantive written comments submitted during the formal comment period prior to making a final decision on such document. Such written response shall be made part of the record of any decision or action. Roles of these agencies are further described in Paragraph (1) of Subsection C of 20.11.3.202 NMAC below.

(3) Project planning, public involvement, management systems, project development and other requirements for the MPO, state DOT and the local publicly-owned transit operator are covered by the applicable DOT rules and regulations for MPOs and state DOTs (23 CFR Part 450, 500, 626 and 771, 49 CFR 613).

C. Interagency consultation procedures roles and responsibilities:

(1) Development of transportation plans and programs and associated conformity determinations.

(a) The MPO, as the lead transportation planning agency, has the primary responsibility in the AMPA for developing the MTP, TIP and technical analyses related to travel demand and other associated modeling, data collection and coordination of consultation for these activities with the agencies specified in Paragraph (1) of Subsection B of 20.11.3.202 NMAC, in accordance with 23 CFR Part 450, 500 and 626. The MPO shall be responsible for regional emissions and travel demand analyses of the MTP and TIP in consultation with the EHD. Corridor and project-level hot spot and emissions analyses, developed in consultation with the EHD, shall be the responsibility of the project-implementing agency through the NEPA process or similar environmental evaluation process.

(b) The committees and member agencies, identified in the most recent MPO document regarding public involvement procedures for transportation plans and programs, entitled *Public Involvement Procedures for the Mid-Region Council of Governments Acting as the MPO for the Albuquerque Metropolitan Planning Area*, shall participate in the MPO process for the development, monitoring and revision of the MTP and the development of the TIP.

(i) The MPO shall forward a preliminary version of the MTP, the TIP and the draft conformity finding to the AQCB for review with a minimum of 14 calendar days to provide comments. Upon release of the final draft of the MTP and TIP for public review, the MPO shall submit the final drafts of the MTP, TIP and accompanying conformity documents to the AQCB and agencies in Paragraph (1) of Subsection B of 20.11.3.202 NMAC for review and comment before adoption and final approval by the MTB. Following review of the conformity determination, the AQCB shall state whether the TIP, the MTP or both are in compliance with the applicable implementation plan. The MPO shall provide a review and comment period consistent with the Metropolitan Planning Rule (23 CFR [~~Section 450.316(b)(1)~~] Section 450.316(a), 49 CFR Section 613). Briefings to the AQCB shall be provided upon request.

(ii) The MPO shall provide information and appropriate advance notification of meeting places, dates and times, agendas and supporting materials for all of its special and regularly scheduled meetings on transportation and air quality to each of the agencies specified in Paragraph (1) of Subsection B of 20.11.3.202 NMAC in accordance with the public involvement process adopted by the MPO, consistent with the Metropolitan Planning Rule (23 CFR [~~Section 450.316(b)(1)~~] Section 450.316(a), 49 CFR Section 613) and described in the MRCOG's public involvement document, entitled *Public Involvement Procedures for the Mid-Region Council of Governments Acting as the MPO for the Albuquerque Metropolitan Planning Area*. The MPO's compliance with the New Mexico Open Meetings Act is documented annually. Resolution of conflicts shall follow the provisions of Subsection E of 20.11.3.202 NMAC.

(2) Development of applicable implementation plans: Within the nonattainment/maintenance area, the EHD, in consultation with the MPO, shall be responsible for developing the transportation-related components for the applicable SIP, air quality modeling, general emissions analysis, emissions inventory, all related activities and coordination of these tasks with the agencies specified in Paragraph (1) of Subsection B of 20.11.3.202 NMAC through the TCTC as described in Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC. Upon release of the final draft of the SIP revision for public review, the EHD shall submit the final draft document to the MTB and agencies in Paragraph (1) of Subsection B of 20.11.3.202 NMAC for review and comment before final adoption by the AQCB. The EHD shall provide at least a 30 day review and comment period consistent with CAA requirements. Briefings to the MTB shall be provided upon request.

(3) The organizational level of regular consultation is described in Subsection B of 20.11.3.202 NMAC and

Subsection C of 20.11.3.202 NMAC. All correspondence concerning consultation related to the transportation conformity SIP shall be addressed to the designated points of contact below:

(a) EPA: regional administrator or designee;

(b) FHWA: division administrator or designee;

(c) FTA: regional administrator or designee;

(d) State DOT: secretary of transportation or designee;

(e) MPO: MRCOG executive director or designee;

(f) EHD: director or designee;

(g) local publicly-owned transit operator: chief administrative officer or designee;

(h) local governments within the nonattainment/maintenance area: chief administrative officer or equivalent or designee.

(4) The MPO shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of 20.11.3.202 NMAC regarding the MTP, TIP and related conformity determinations The project implementing agencies shall respond in writing to substantive written comments regarding projects in accordance with the provisions of 20.11.3 NMAC. The EHD shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of 20.11.3.202 NMAC regarding the transportation components of the applicable implementation plan for the nonattainment/maintenance area, in accordance with the provisions of 20.11.3 NMAC. All formal comments (e.g. those received during the public comment period) and responses to those comments shall be included within final documents before they are forwarded for review and final approval by the FHWA/FTA or EPA, as appropriate.

(5) Prior to AQCB adoption of a TCM in the applicable implementation plan, the MPO shall, in consultation and coordination with the agencies identified in Paragraph (1) of Subsection D of 20.11.3.202 NMAC, develop the proposed TCM in a manner consistent with the MTP and TIP transportation development processes. After approval of a TIP, MTP or both, the AQCB shall incorporate all proposed TCMs into the applicable implementation plan. The necessary TCMs shall be specifically described in the applicable implementation plan. TCMs shall also be cross-referenced to the approved TIP, MTP or both. EHD shall coordinate the necessary efforts to achieve inclusion of the proposed TCM into the applicable implementation plan. The TCMs approved by the AQCB and subsequently by the EPA as part of the applicable implementation plan shall receive priority funding for implementation in a manner consistent with funding and phasing schedules specified in the MPO's TIP or MTP or both.

(a) In the event that implementation of a TCM is infeasible in the time frame for that measure in the applicable implementation plan (as defined in Subsection D of 20.11.3.7 NMAC), the parties in the interagency consultation process established pursuant to Paragraph (1) of Subsection D of 20.11.3.202 NMAC shall assess whether such a measure continues to be appropriate. When the MPO and the AQCB concur that a TCM identified in the applicable implementation plan is no longer appropriate, the agencies may initiate the process described in Subparagraph (b) through Subparagraph (e) of Paragraph (5) of Subsection C of 20.11.3.202 NMAC to identify and adopt a substitute TCM.

(b) Substitution of TCMs. Any TCM that is specified in the applicable implementation plan may be [~~substituted by another TCM~~] replaced or added to the implementation plan with alternate or additional TCMs without an implementation plan revision if the proposed measure meets the following provisions [~~of 20.11.3 NMAC~~]:

(i) upon request by the MPO, the EHD shall convene the TCTC to identify and evaluate possible substitute and additional measures; consultation with EPA may be accomplished by sending copies of all draft and final documents, agendas and reports to EPA Region 6;

(ii) [~~a~~] the substitute TCM shall provide for equivalent or greater emissions reductions than the TCM [~~contained~~] to be replaced in the applicable implementation plan, as demonstrated by an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced TCM in the implementation plan;

(iii) [~~a~~] the substitute TCM shall be implemented [~~in the time frame established~~] in accordance with a schedule that is consistent with the schedule provided for the TCM contained in the applicable implementation plan; or if the implementation plan date for implementation of the TCM to be replaced has already passed, a TCM selected pursuant to 20.11.3 NMAC that requires funding shall be included in the first year of the next MTP and TIP adopted by the MPO; however, the substituted TCM shall be implemented as soon as possible, but not later than one year from the date of the original TCM, and in no case, later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iv) in order for the AQCB to adopt substitute and additional TCMs, there shall be evidence of adequate personnel, funding and authority under state or local law to implement, monitor and enforce the control measures; commitments to implement the substitute TCMs shall be made by the agency with legal authority for implementation;

(v) the TCMs substituted under 20.11.3.202 NMAC for purposes of the applicable implementation plan shall receive priority funding for implementation within the MPO's MTP and TIP funding processes; and

[~~(iv)~~] (vi) no TCM shall be replaced until the substitute TCM has been adopted and the existing TCM in the applicable implementation plan has been rescinded by the AQCB; adoption of a substitute TCM by the AQCB formally rescinds the previously applicable TCM and adopts the substitute TCM.

(c) Public participation: After the concurrence required under Subparagraph (a) of Paragraph (5) of Subsection C of 20.11.3.202 NMAC, the AQCB shall conduct a public hearing and comment process, in accordance with 40 CFR 52.102, on the proposed substitute TCM(s). The hearing can only be held after a reasonable public notice and comment period, which begins at least 30 days prior to the hearing date. The AQCB shall ensure that:

(i) the public is notified by prominent advertising in the area affected announcing the time, date and place of the hearing;

(ii) each proposed plan or revision is available for public inspection in at least one location in the applicable area;

(iii) the MPO, EPA, affected local agencies and other interested parties are notified; and

(iv) a description of the TCM(s), analysis supporting the proposal, assumptions and methodology are available to the public, the MPO and EPA for at least 30 days before the public hearing and at least 30 days prior to the close of the public comment period.

(d) Concurrence process for substitute TCMs:

(i) before initiating any public participation process, the AQCB, MPO and EPA shall concur with the appropriateness and equivalency of the substitute or additional TCM;

(ii) the AQCB shall respond to all public comments and submit to EPA a summary of comments received during the public comment period along with the responses following the close of the public comment period;

(iii) the EPA shall notify the AQCB within 14 days if EPA's concurrence with the substitution TCM has changed as a result of public comment;

(iv) all substitute TCMs shall be adopted by the AQCB following the public comment period and EPA's concurrence described in Subparagraph (d) of Paragraph (5) of Subsection C of 20.11.3.202 NMAC; if not adopted, the substitute TCM cannot replace the existing TCM.

(e) Technical information: The analysis of substitute TCMs shall be consistent with methodology used for evaluating TCMs in the nonattainment or maintenance plan. Where emissions models or transportation models have changed since those used for purposes of evaluating measures in the nonattainment or maintenance plan, the TCM to be replaced and the substitute TCMs shall be evaluated using the latest modeling techniques for purposes of demonstrating equivalency or greater emissions reductions. The key methodology and assumptions shall be consistent with EPA approved regional and hot-spot emissions models (for CO, PM_{10} and $PM_{2.5}$), the area's transportation model, and population and employment growth projections.

(f) Record keeping: The AQCB shall maintain documentation of approved TCM substitutions. The documentation shall provide a description of the substitute and replaced TCMs, including requirements and schedules. The documentation shall also provide a description of the substitution process including the public and agency participation and coordination with the TCTC, the public hearing and comment process, EPA concurrence and AQCB adoption. The documentation shall be submitted to EPA following adoption of the substitute TCMs by the AQCB, and made available to the public as an attachment to the applicable implementation plan.

(g) Adoption:

(i) concurrence by the metropolitan planning organization, the state air pollution control agency and the administrator as required by Subparagraph (i) of Paragraph (d) of Subsection C of 20.11.3.202 NMAC, shall constitute adoption of the substitute or additional control measures so long as the requirements of Paragraph (b) of Subsection C of 20.11.3.202 NMAC are met;

(ii) once adopted, the substitute or additional control measures become, by operation of law, part of the state implementation plan and become federally enforceable;

(iii) within 90 days of its concurrence under Subparagraph (i) of Paragraph (d) of Subsection C of 20.11.3.202 NMAC, the state air pollution control agency shall submit the substitute or additional control measure to the administrator for incorporation in the codification of the applicable implementation plan; notwithstanding any other provision of the Clean Air Act, no additional state process shall be necessary to support such revision to the applicable plan.

(h) No requirement for express permission. The substitution or addition of a transportation control measure in accordance with Paragraph (5) of Subsection C of 20.11.3.202 NMAC and the funding or approval of such a control measure shall not be contingent upon the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

(i) No requirement for new conformity determination. The substitution or addition of a transportation control measure in accordance with Paragraph (5) of Subsection C of 20.11.3.202 NMAC shall not require:

(i) a new conformity determination for the transportation plan; or

(ii) a revision of the implementation plan.

~~[~~ ~~**(6) Adoption of land use measures (LUMs) into the applicable implementation plan:** The AQCB shall incorporate all LUMs into the applicable implementation plan. EHD shall coordinate the necessary efforts to achieve inclusion of the LUM into the applicable implementation plan. Prior to applying air quality credits associated with the LUM to the air quality conformity determination for the TIP or the MTP or both, one of the following shall occur: 1) the appropriate local jurisdictions shall have adopted the LUM, or 2) a written commitment to adopt the LUM by a certain date from the appropriate local jurisdictions shall have been submitted to the AQCB. The MPO shall submit the LUM or the written commitment to the AQCB, and the AQCB shall submit the LUM or written commitment to the EPA for incorporation into the applicable implementation plan.~~

~~(a) In order to apply air quality credit to the air quality conformity determination, the MPO shall quantify the air quality benefits of the LUM, identify and develop a monitoring and reporting program that shall evaluate effectiveness of the LUM, and describe any enforcement mechanisms that shall ensure the success of the LUM. Sufficient detail shall exist explaining the LUM so that relevant future land use decisions are clearly guided by the LUM.~~

~~(b) No fewer than 60 days and no more than 120 days prior to submitting the preliminary version of the MTP, TIP and the draft conformity finding to the AQCB as required in Subsection C of 20.11.3.202 NMAC, the MPO shall submit to the AQCB the results of the monitoring and reporting program for the LUM. The MPO shall provide results of the monitoring and reporting program to the AQCB at least once every three years. Within the jurisdiction of the AQCB, if a person or entity responsible for implementing provisions of the LUM fails to take reasonable actions necessary to achieve the LUM, the AQCB may deem this a violation of the applicable implementation plan. If the AQCB determines that the LUM is not making reasonable progress toward achieving the expected air quality benefits or if the AQCB determines that circumstances have changed such that implementation of the LUM has become infeasible, the AQCB and other responsible agencies shall follow the steps outlined in Subparagraph (b) of Paragraph (7) of Subsection C of 20.11.3.202 NMAC to correct implementation deficiencies.~~

~~**(7) General requirements for LUMs and TCMs:** Implementation plan rules that pertain to TCMs that are included in the applicable implementation plan generally apply to LUMs. Procedures for substituting LUMs shall be consistent with procedures identified for substituting TCMs.~~

~~(a) Specific performance criteria shall be included in the TIP, the MTP or both for each LUM and TCM. The performance criteria shall include the timing for implementation, the quantification of anticipated air quality benefits, the responsible or lead agency for implementation, the method to measure whether the air quality benefits are being realized according to the timing and phasing of each LUM and TCM in the TIP, the MTP or both, and any supporting policies or regulatory mechanisms needed to implement the LUM and TCM.~~

~~(b) If the AQCB determines that a LUM or TCM is not being implemented consistent with the performance criteria and therefore is not successfully achieving the anticipated air quality benefits, the AQCB can issue a declaration to the MTB and the agencies identified in Paragraph (1) of Subsection D of 20.11.3.202 NMAC that the AQCB has identified noncompliance with the applicable implementation plan. The AQCB and other responsible agencies shall take appropriate actions to correct the deficiencies identified by the AQCB. Within 120 days from the date of the AQCB's declaration, the responsible agencies shall submit a corrective action plan to the AQCB to address the deficiencies. LUMs or TCMs in the approved corrective action plan shall comply with all requirements of 20.11.3 NMAC pertaining to LUMs and TCMs. Failure to obtain AQCB approval of the action plan within 120 days after submission to the AQCB is a violation of 20.11.3 NMAC.~~]

D. Interagency consultation procedures: Specific processes.

(1) Interagency consultation procedures for the Bernalillo county nonattainment/maintenance area, in accordance with Subsection C of 20.11.3.202 NMAC, shall

involve the MPO (transportation, land use and transit members from within the AMPA), state DOT, EPA, FHWA, FTA and the air agency. The TCTC's role in interagency consultation for the specific processes is described below. The TCTC shall include representatives as described in Paragraph (1) of Subsection B of 20.11.3.202 NMAC. The TCTC shall be established by the air agency in cooperation with the MPO. The TCTC shall meet on an as-needed basis. The air agency, in consultation with the MPO, shall be responsible for convening meetings and establishing meeting agendas.

(a) The TCTC shall evaluate and participate in establishing the circumstances for the application of a transportation or air quality model (or models). Committee review shall include VMT forecasting and associated methods and assumptions to be used in: 1) hot-spot and regional emissions analysis for establishing motor vehicle emissions budgets; 2) developing the MTP and the TIP; 3) developing implementation plan revisions directly applicable to transportation, and 4) making the conformity determinations and planning assumptions identified in 20.11.3.207 NMAC. The TCTC shall also review assumptions, analyses and results of the conformity and fiscal constraint determinations and other applicable implementation plan revisions or actions affecting the MTP and transportation programs. The TCTC shall function as a cooperative interagency effort to share mobile source modeling and transportation and air quality modeling information, and to evaluate modeling assumptions through interagency consultation. Regional modeling shall be the responsibility of the MPO and the air agency as appropriate. Hot-spot analysis shall be the responsibility of the lead agency of the project requiring the analysis. Before new models used in hot-spot or regional emissions analyses are adopted for general use, the TCTC shall be provided an opportunity to review and comment. This process also applies to consultation on the design, schedule and funding of research and data collection efforts regarding regional transportation models developed by the MPO (e.g. household travel transportation surveys) described in 20.11.3.207 NMAC. New modeling information shall be presented by the air agency and the MPO in regularly scheduled meetings.

(b) The TCTC shall determine which minor arterials and other transportation projects shall be considered regionally significant for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects shall be considered to have a significant change in design concept, timing and scope from the MTP or TIP. When the TCTC determines that a significant change in design concept, timing and scope has occurred, the MPO and lead agency shall, as part of the MTP and TIP process, consult with the appropriate agencies identified in Paragraph (1) of Subsection D of 20.11.3.202 NMAC to assess the impact of this project change on the conformity determination. The MPO shall redetermine transportation conformity for air quality if a significant change occurs within the transportation network that is likely to lead to a meaningful increase in a pollutant for which the nonattainment area exceeds the NAAQs, or for an area that is designated as attainment and is subject to a maintenance plan.

(c) The TCTC shall evaluate whether projects otherwise exempt from meeting the regional or hot-spot conformity analysis requirements shall be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The MPO's conformity documents shall include a list of transportation projects exempted from inclusion in a regional conformity determination. Exempt projects are identified in 20.11.3.223 NMAC and 20.11.3.224 NMAC. The process used to reach a determination of exemption shall include an evaluation of whether or not the exempt project shall interfere with or impede the implementation of TCMs in the applicable implementation plan. If no substantive comments related to air quality impacts are received as part of the TIP review process, the lead agency for the project may proceed with implementation of the exempt project. If substantive air quality impact comments are received which indicate that an exempt project may adversely affect air quality, the lead agency for the project shall consult with the air agency and the MPO to determine the appropriate action necessary to address the adverse air quality impacts.

(d) If TCMs are included in the SIP, the MPO shall give maximum priority to approval or funding of those TCMs, report to the AQCB annually whether those TCMs are on schedule and, if not, what delays have been encountered, what obstacles to implementation have been identified and whether or not these obstacles are likely to be overcome. The AQCB shall also consider whether delays in TCM implementation necessitate a SIP revision to remove, substitute, or modify TCMs or identify other reduction measures. If substitute TCMs or other reduction measures beyond those already in the SIP are deemed necessary through the consultation process specified in 20.11.3.202 NMAC, the MPO shall work with the members of the TCTC to identify and coordinate appropriate modifications to the MTP, TIP and conformity determination. All revisions to the MTP, TIP and conformity determination shall be made as part of the MPO's transportation planning process.

(e) The MPO shall, through its transportation planning process, notify the agencies represented on the TCTC regarding revisions and amendments to the MTP and TIP that merely add or delete exempt projects identified in 20.11.3.223 NMAC.

(f) If Bernalillo county is designated nonattainment for PM_{10} or $PM_{2.5}$, the consultative process as specified in Subsection D of 20.11.3.202 NMAC shall be used to coordinate the identification of projects located at sites that have vehicle and roadway emission and dispersion characteristics which are similar to those sites that have violations verified by monitoring. A quantitative PM_{10} hot-spot analysis shall be required for these projects in accordance with Subsection B of 20.11.3.220 NMAC. The air agency, in consultation with the MPO, shall advise the appropriate lead agency responsible for project development of the projects identified and the basis for their identification.

(g) The MPO shall provide written notification to all agencies in the MTP, TIP and conformity determination processes, including the AQCB, of plan revisions or plan amendments that merely add or delete exempt projects identified in 20.11.3.223 NMAC.

(h) Requirements for conformity tests for isolated rural nonattainment and maintenance areas shall be governed by Paragraph (2) of Subsection L of 20.11.3.206 NMAC.

(2) Interagency consultation procedures shall include the agencies specified in Paragraph (1) of Subsection D of 20.11.3.202 NMAC. These agencies shall participate in the following processes.

(a) In addition to the triggers defined in 20.11.3.201 NMAC, the air agency may request a new conformity determination when an emergency project involves substantial functional, location or capacity changes, or when the project may otherwise adversely affect the transportation conformity determination.

(b) If an adjacent area is designated nonattainment and the area includes another MPO, the agencies involved shall cooperatively share the responsibility for conducting conformity determinations for transportation activities that cross borders of the MPOs or nonattainment areas. An agreement shall be developed between the MPOs and other appropriate local and state government agencies to address the responsibilities of each for regional emissions analysis.

(3) Although the metropolitan

planning area may not include all of the nonattainment/ maintenance area of Bernalillo county, the MPO (which is also the regional planning organization for all of Bernalillo county), in coordination with the state DOT, shall be responsible for conducting conformity analyses and conformity determinations for transportation activities for the entire nonattainment/ maintenance area that is located within the MPO's area of planning responsibility.

(4) Interagency consultation on regionally significant non-FHWA/FTA projects:

(a) Any group, entity or individual planning to construct a regionally significant transportation project that is not a FHWA/FTA project (including a project for which alternative locations, design concept and scope, or the no-build option is still being considered), including projects planned by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, shall ensure that these plans are disclosed to the MPO on a regular basis through the MTP and TIP development processes, or as soon as they are identified, and shall notify the MPO immediately of any changes to an existing plan so that these transportation projects can be incorporated into the regional emissions analysis and modeling for the nonattainment/maintenance area. Any member of the TCTC may request that the TCTC make a determination regarding whether a project is regionally significant. Upon receipt of a written request stating the reasons why the TCTC should make a determination, the EHD in coordination with the MRCOG shall convene a meeting of the TCTC to make a determination regarding regional significance. If the TCTC determines that the non-FHWA/FTA project is not regionally significant, no further actions by the TCTC are required. If the TCTC determines that the non-FHWA/FTA project is regionally significant, the TCTC will follow the requirements of 20.11.3 NMAC and the MPO will incorporate the project into the regional emissions analysis, the TIP and the MTP.

(b) The sponsor of any regionally significant project, and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, who knows about any such project through applications for approval, permitting, funding or otherwise gains knowledge of a regionally significant project, shall promptly disclose the project to the MPO. Such disclosures shall be made not later than the first occasion on which any of the following actions is sought: any MTB action or other action by government decision making bodies necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent upon the completion of a regionally significant project. At the earliest opportunity, the MPO shall apprise the agencies participating in the consultation process identified above in Paragraph (1) of Subsection D of 20.11.3.202 NMAC of these projects and include them in the conformity analysis networks.

(c) Procedures to address nonconforming regionally significant projects not in the TIP or MTP or both. When an regionally significant project has not been included in the TIP or MTP or both, the TCTC shall participate in the air quality evaluation of a non-conforming regionally significant project to ensure that the project is integrated into the regional emissions analysis, the TIP and the MTP in a manner consistent with the MPO's transportation planning process, the requirements of 20.11.3 NMAC and other applicable federal requirements. Section 23 CFR 450.316 lists factors that shall be considered as part of the planning process. Among the factors that shall be considered is an analysis of the effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the funding source. Therefore, a regionally significant project funded entirely with local funding is subject to the planning requirements of Section 23 CFR 450.316. The analysis shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation demand and supporting the overall efficiency and effectiveness of transportation system performance and related impacts on community/central city goals regarding social and economic development, housing and employment. Another factor that shall be considered is the overall social, economic, energy and environmental effects of transportation decisions (including consideration of the effects and impacts of the transportation plan on the human, natural and manmade environment and consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation-related air quality problems in support of 23 U.S.C. 109(h) and Section 14 of the Federal Transit Act (49 U.S.C. 1610), Section 4(f) of the DOT Act (49 U.S.C. 303) and Section 174(b) of the Clean Air Act (42 U.S.C. 7504(b)). All projects, including regionally significant projects not yet included in a TIP or MTP or both, shall follow the requirement in 23 CFR 450.316 that calls for a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs and that provides for involvement of local, state and federal environment resource (e.g., EPA, EHD) and permit agencies as appropriate.

(d) If a regionally significant project has not been disclosed in a timely manner to the MPO and other agencies involved in the consultation process, then, for the purposes of 20.11.3.218 NMAC, the regionally significant project shall not qualify as a conforming project until the project complies with the requirements of 20.11.3 NMAC. When a regionally significant project has not been included in the regional emissions analysis for the current conforming TIP or MTP or both, proceeding toward implementing the project without complying with 20.11.3.202 NMAC and 20.11.3.218 NMAC may be inconsistent with federal and local laws including, but not limited to the following.

(i) 23 U.S.C. Section 109(i). This requires that the secretary of transportation for the DOT consult with the administrator for the EPA to develop and promulgate guidelines to assure that highways constructed pursuant to Title 23 of the U.S. Code are consistent with the applicable implementation plan pertaining to a nonattainment area or an attainment area subject to a maintenance plan. 20.11.3 NMAC is part of the applicable implementation plan.

(ii) 23 CFR Section 450.312, metropolitan transportation planning: Responsibilities, cooperation, and coordination. This prohibits the MRCOG from approving any transportation plan or program that does not conform to the applicable implementation plan. Regionally significant projects are required to be included in the regional emissions analysis for the transportation plan or program.

(iii) 23 CFR Section 450.324, transportation improvement program: General. This requires that the TIP include all regionally significant projects to be funded with non-federal funds in the air quality analysis for nonattainment areas and areas subject to a maintenance plan.

(iv) 20.11.3 NMAC, *Transportation Conformity*. This regulation requires that regionally significant projects be included in the transportation plans and the regional emissions analysis. Failure to include a regionally significant project in a transportation plan violates

20.11.3 NMAC and jeopardizes approval of the regional MTP and the TIP.

(e) Consequences of implementing a non-conforming regionally significant project: Violations of 20.11.3 NMAC may result in criminal, civil and administrative penalties, including a potential administrative penalty of $15,000 per day of noncompliance. In addition, the EPA may determine that implementing a nonconforming regionally significant project violates the applicable implementation plan, and the EPA may impose federal sanctions that would jeopardize the receipt of federal transportation funds to the affected area, including Title 23, U.S.C. or Federal Transit Act funds. In addition, the FHWA must periodically review the transportation planning process used by the MRCOG, and failure to follow federal requirements may adversely affect FHWA's certification of the MRCOG process.

(f) For the purposes of 20.11.3.202 NMAC and 20.11.3.218 NMAC, the phrase "adopt or approve a regionally significant project" means the first time any action necessary to authorize a project occurs, such as any MTB action or other action by government decision making bodies necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

(5) When there is insufficient information to model the projects described in Paragraph (4) of Subsection D of 20.11.3.202 NMAC, the MPO, in consultation with the lead agency for the project, shall make assumptions about the location, timing, design concept and scope for those projects that are disclosed to the MPO as required in Paragraph (4) of Subsection D of 20.11.3.202 NMAC.

(6) The MPO or other consulting agencies shall provide copies of adopted documents and supporting information on the approved MTP or TIP conformity determination or adopted SIP revisions to all agencies listed in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

E. Resolving conflicts:

(1) The air agency and the MPO (or state DOT when applicable) shall make a good-faith effort to address the major concerns of the other party and reach a resolution. Every reasonable effort shall be made to resolve differences. In the event that the parties cannot reach agreement, the conflict shall be escalated to the governor.

(2) In the event that the parties agree that every reasonable effort has been made to address major concerns but no further progress is possible, the MPO shall promptly notify the director of the air agency in writing of the inability to resolve concerns or agree upon the final decision or action. Notification shall be provided within 30 days and shall be provided by registered mail. The MPO shall cite this paragraph in any such notification to the air agency.

(3) The air agency has 14 calendar days from the date of receipt of notification as required in Paragraph (2) of Subsection E of 20.11.3.202 NMAC to appeal to the governor. Notification shall be provided by registered mail. The air agency shall cite this paragraph in any notification of a conflict that requires action by the governor or his designee. If the air agency appeals to the governor, the final conformity determination shall have the concurrence of the governor. The governor or his designee may issue a written decision on the appeal within 30 calendar days of receipt of the appeal. If the air agency does not appeal to the governor within 14 calendar days from receipt of written notification, the MPO may proceed with the final conformity determination. The governor may delegate his role in this process, but not to the members or staff of: the AQCB, director of the city or county EHD, secretary of the environment department, chief of the state air quality bureau, manager of the city of Albuquerque's air quality division, the environmental improvement board, secretary of the DOT, state highway commission or an MPO.

F. Public consultation procedures: Affected agencies making conformity determinations on transportation plans, programs and projects shall establish a proactive public involvement process that provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for the MTP and TIP, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying shall be consistent with the fee schedule contained in 49 CFR 7.43 and NMSA 14-2-9.B.3. In addition, these agencies shall specifically address in writing all public comments stating that known plans for a regionally significant project, which is not receiving FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis that supports a proposed conformity finding for the MTP or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

[7/1/98; 20.11.3.202 NMAC - Rn, 20 NMAC 11.03.II.3, & A, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.203 CONTENT OF TRANSPORTATION PLANS AND TIMEFRAME OF CONFORMITY DETERMINATIONS:

A. Transportation plans adopted after January 1, 1997 in serious, severe or extreme ozone non-attainment areas and in serious CO nonattainment areas. If the metropolitan planning area contains an urbanized area population greater than 200,000, the transportation plan shall specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The MPO, in developing the transportation plan in consultation with the affected agencies identified in Paragraph (1) of Subsection D of 20.11.3.202 NMAC, may choose any years to be horizon years, subject to the following restrictions:

(a) horizon years may be no more than 10 years apart;

(b) the first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model;

(c) [~~if the attainment year is in the time-span of the transportation plan, the attainment year shall be a horizon year; and~~] the attainment year must be a horizon year if it is in the timeframe of the transportation plan and conformity determination;

(d) [~~the last horizon year shall be~~] the last year of the transportation plan's forecast period shall be a horizon year; and

(e) if the timeframe of the conformity determination has been shortened under Subsection D of 20.11.3 NMAC, the last year of the timeframe of the conformity determination must be a horizon year.

(2) For these horizon years:

(a) the transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by 20.11.3.202 NMAC;

(b) the highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years; additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones; each added or modified

highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO; transit facilities, equipment and services envisioned for the future shall be identified in terms of design concept, design scope and operating policies that are sufficient for modeling transit ridership; additions and modifications to the transportation network shall be described sufficiently to demonstrate a reasonable relationship between expected land use and the envisioned transportation system; and

(c) other future transportation policies, requirements, services and activities, including intermodal activities, shall be described.

B. Two-year grace period for transportation plan requirements in certain ozone and CO areas: The requirements of Subsection A of 20.11.3.203 NMAC apply to such areas or portions of such areas that have previously not been required to meet these requirements for any existing NAAQS two years from the following:

(1) the effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) the official notice by the census bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or,

(3) the effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

C. Transportation plans for other areas: Transportation plans for other areas shall meet the requirements of Subsection A of 20.11.3.203 NMAC at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future shall be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of 20.11.3.206 NMAC through 20.11.3.216 NMAC.

D. Timeframe of conformity determination:

(1) Unless an election is made under Paragraph (2) or (3) of Subsection D of 20.11.3.203 NMAC, the timeframe of the conformity determination shall be through the last year of the transportation plan's forecast period.

(2) For areas that do not have an adequate or approved CAA Section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the transportation plan and TIP conformity determination, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(a) The shortened timeframe of the conformity determination must extend at least to the latest of the following years:

(i) the tenth year of the transportation plan;

(ii) the latest year for which an adequate or approved motor vehicle emissions budget(s) is established in the submitted or applicable implementation plan; or

(iii) the year after the completion date of a regionally significant project if the project is included in the TIP or the project requires approval before the subsequent conformity determination.

(b) The conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis, if such a year extends beyond the timeframe of the conformity determination.

(3) For areas that have an adequate or approved CAA Section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the conformity determination to extend through the last year of such maintenance plan after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(4) Any election made by an MPO under Paragraph (2) or (3) of Subsection D of 20.11.3.203 NMAC shall continue in effect until the MPO elects otherwise, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

[~~D.~~] **E. Savings:** The requirements of 20.11.3.203 NMAC supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

[7/1/98; 20.11.3.203 NMAC - Rn, 20 NMAC 11.03.II.4, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.206 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS: GENERAL:

A. In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT shall demonstrate that the applicable criteria and procedures in 20.11.3 NMAC are satisfied. The MPO and DOT shall comply with all applicable conformity requirements of implementation plans and court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs and FHWA/FTA projects), the relevant pollutant(s) and the status of the implementation plan.

B. Table 1 in Subsection B of 20.11.3.206 NMAC indicates the criteria and procedures in 20.11.3.207 NMAC through 20.11.3.216 NMAC, which apply for transportation plans, TIPs and FHWA/FTA projects. Subsection C through Subsection I of 20.11.3.206 NMAC explains when the budget, interim emissions and hot-spot tests are required for each pollutant and NAAQS. Subsection J of 20.11.3.206 NMAC addresses conformity requirements for areas with approved or adequate limited maintenance plans. Subsection K of 20.11.3.206 NMAC addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Subsection L of 20.11.3.206 NMAC addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

[Please see Table on page 1058]

TABLE 1. CONFORMITY CRITERIA

All Actions at all times:	
20.11.3.207 NMAC	Latest planning assumptions
20.11.3.208 NMAC	Latest emissions model
20.11.3.209 NMAC	Consultation
Transportation Plan:	
Subsection B of 20.11.3.210 NMAC	TCMs.
20.11.3.215 [~~and/or~~] or 20.11.3.216 NMAC	Emissions budget [~~and/or~~] or interim emissions
TIP:	
Subsection C of 20.11.3.210 NMAC	TCMs.
20.11.3.215 [~~and/or~~] or 20.11.3.216 NMAC	Emissions budget [~~and/or~~] or interim emissions
Project (from a con forming plan and TIP):	
20.11.3.211 NMAC	Currently conforming plan and TIP
20.11.3.212 NMAC	Project from a conforming plan and TIP
20.11.3.213 NMAC	CO, [~~and~~] PM_{10} and $PM_{2.5}$ hot-spots
20.11.3.214 NMAC	PM_{10} and $PM_{2.5}$ control measures
Project (Not From a Co nforming Plan and TIP):	
Subsection D of 20.11.3.210 NMAC	TCMs.
20.11.3.211 NMAC	Currently conforming plan and TIP
20.11.3.213 NMAC	CO, [~~and~~] PM_{10} and $PM_{2.5}$ hot-spots
20.11.3.214 NMAC	PM_{10} and $PM_{2.5}$ control measures
20.11.3.215 [~~and/or~~] or 20.11.3.216 NMAC	Emissions budget [~~and/or~~] or interim emissions

C. 1-hour ozone NAAQS nonattainment and maintenance areas: Subsection C of 20.11.3.206 NMAC applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (i.e. until the effective date of any revocation of the 1-hour ozone NAAQS for an area). In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in such ozone nonattainment and maintenance areas, conformity determinations shall include a demonstration that the budget [~~and/or~~] or interim emissions tests are satisfied as described in the following.

(1) In all 1-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.215 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests shall be satisfied as required by 20.11.3.216 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 1-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS.

(3) An ozone nonattainment area shall satisfy the interim emissions test for NO_X, as required by 20.11.3.216 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_X. The implementation plan for the 1-hour ozone NAAQS shall be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan or plan submission contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 1990.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually marginal and below areas) shall satisfy one of the following requirements:

(a) the interim emissions tests required by 20.11.3.216 NMAC; or

(b) the state shall submit to EPA an implementation plan revision for the 1-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by 20.11.3.215 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection C of 20.11.3.206 NMAC).

(5) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection C of 20.11.3.206 NMAC, moderate and above ozone nonattainment areas with three years of clean data for the 1-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has

determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 1-hour ozone NAAQS shall satisfy one of the following requirements:

(a) the interim emissions tests as required by 20.11.3.216 NMAC;

(b) the budget test as required by 20.11.3.215 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 1-hour ozone NAAQS (subject to the timing requirements of Paragraph (1) of Subsection C of 20.11.3.206 NMAC; or

(c) the budget test as required by 20.11.3.215 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 1-hour ozone NAAQS.

D. 8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area: Subsection D of 20.11.3.206 NMAC applies to areas that were never designated nonattainment for the 1-hour ozone NAAQS and areas that were designated nonattainment for the 1-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. Subsection D of 20.11.3.206 NMAC applies one year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC. In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget [~~and/or~~] or interim emissions tests are satisfied as described in the following.

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.215 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, Part D, Subpart 1 areas), the interim emissions tests shall be satisfied as required by 20.11.3.216 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS.

(3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO_X, as required by 20.11.3.216 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_X. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan or plan submission contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 2002.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually marginal and certain Clean Air Act, Part D, Subpart 1 areas) shall satisfy one of the following requirements:

(a) the interim emissions tests required by 20.11.3.216 NMAC; or

(b) the state shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by 20.11.3.215 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) as described in Paragraph (1) of Subsection D of 20.11.3.206 NMAC.

(5) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection D of 20.11.3.206 NMAC, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS shall satisfy one of the following requirements:

(a) the interim emissions tests as required by 20.11.3.216 NMAC;

(b) the budget test as required by 20.11.3.215 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection D of 20.11.3.206 NMAC; or

(c) the budget test as required by 20.11.3.215 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

E. 8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area: Subsection E of 20.11.3.206 NMAC applies one year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC. In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget [~~and/or~~] or interim emissions tests are satisfied as described in the following.

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.215 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) Prior to Paragraph (1) of Subsection E of 20.11.3.206 NMAC applying, the following test(s) shall be satisfied [~~subject to the exception in Subparagraph (c) of Paragraph (2) of Subsection E of~~

~~20.11.3.206 NMAC~~]:

(a) if the 8-hour ozone nonattainment area covers the same geographic area as the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by 20.11.3.215 NMAC using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission;

(b) if the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by 20.11.3.215 NMAC for either:

(i) the 8-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by 20.11.3.202 NMAC; or

(ii) the 1-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; if additional emissions reductions are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases, these emissions reductions shall come from within the 8-hour nonattainment area;

(c) if the 8-hour ozone nonattainment area covers a larger geographic area and encompasses the entire 1-hour ozone nonattainment or maintenance area(s):

(i) the budget test as required by 20.11.3.215 NMAC for the portion of the 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; and

(ii) the interim emissions tests as required by 20.11.3.216 NMAC for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state of a multi-state 1-hour nonattainment or maintenance area;

(d) if the 8-hour ozone nonattainment area partially covers a 1-hour ozone nonattainment or maintenance area(s):

(i) the budget test as required by 20.11.3.215 NMAC for the portion of the 8-hour ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by 20.11.3.202 NMAC; and

(ii) the interim emissions tests as required by 20.11.3.216 NMAC, when applicable, for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state in a multi-state 1-hour nonattainment or maintenance area.

[~~(e) notwithstanding Subparagraphs (a), (b), (c) and (d) of Paragraph (2) of Subsection E of 20.11.3.206 NMAC, the interim emissions tests as required by 20.11.3.216 NMAC, where the budget test using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan(s) or implementation plan submission(s) for the relevant area or portion thereof is not the appropriate test and the interim emissions tests are more appropriate to ensure that the transportation plan, TIP or project not from a conforming plan and TIP will not create new violations, worsen existing violations or delay timely attainment of the 8-hour ozone standard, as determined through the interagency consultation process required by 20.11.3.202 NMAC.~~]

(3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO_X, as required by 20.11.3.216 NMAC, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_X. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan or plan submission contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 2002. Prior to an adequate or approved NO_X motor vehicle emissions budget in the implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 1990.

(4) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection E of 20.11.3.206 NMAC, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS shall satisfy one of the following requirements:

(a) the budget test [~~and/or~~] or interim emissions tests as required by 20.11.3.215 NMAC and 20.11.3.216 NMAC and as described in Paragraph (2) of Subsection E of 20.11.3.206 NMAC;

(b) the budget test as required by 20.11.3.215 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection E of 20.11.3.206 NMAC; or

(c) the budget test as required by 20.11.3.215 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

F. CO nonattainment and maintenance areas: In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations shall include a demonstration that the hot-spot, budget [~~and/or~~] or emission reduction tests are satisfied as described in the following:

(1) FHWA/FTA projects in CO nonattainment or maintenance areas shall satisfy the hot-spot test required by Subsection A of 20.11.3.213 NMAC at all times; until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects shall also satisfy the hot-spot test required by Subsection B of 20.11.3.213 NMAC;

(2) in CO nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.215 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal reg-

ister; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking;

(3) except as provided in Paragraph (4) of Subsection F of 20.11.3.206 NMAC, in CO nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.216 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan;

(4) CO nonattainment areas that have not submitted a maintenance plan and that are not required to submit an attainment demonstration (e.g. moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) shall satisfy one of the following requirements:

(a) the interim emissions tests required by 20.11.3.216 NMAC; or

(b) the state shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by 20.11.3.215 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (2) of Subsection F of 20.11.3.206 NMAC).

G. PM_{10} nonattainment and maintenance areas: In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in PM_{10} nonattainment and maintenance areas conformity determinations shall include a demonstration that the hot-spot, budget [~~and/or~~] or interim emissions tests are satisfied as described in the following.

(1) FHWA/FTA projects in PM_{10} non-attainment or maintenance areas shall satisfy the hot-spot test required by Subsection A of 20.11.3.213 NMAC.

(2) In PM_{10} nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.215 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(3) In PM_{10} nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.216 NMAC for conformity determinations made:

(a) if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan; or

(b) if the submitted implementation plan revision is a demonstration of impracticability under CAA Section 189(a)(1)(B)(ii) and does not demonstrate attainment.

H. NO_2 nonattainment and maintenance areas: In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in NO_2 nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget [~~and/or~~] or interim emissions tests are satisfied as described in the following.

(1) In NO_2 nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.215 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) In NO_2 nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.216 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

I. $PM_{2.5}$ nonattainment and maintenance areas: In addition to the criteria listed in Table 1 of Subsection B of 20.11.3.206 NMAC that are required to be satisfied at all times, in $PM_{2.5}$ nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget [~~and/or~~] or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in $PM_{2.5}$ nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.213 NMAC;

[~~(1)~~](2) in $PM_{2.5}$ nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.215 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking;

[~~(2)~~](3) in $PM_{2.5}$ nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.216 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

J. Areas with limited maintenance plans: Notwithstanding the other subsections of 20.11.3.206 NMAC, an area is not required to satisfy the regional emissions analysis for 20.11.3.215 NMAC [~~and/or~~] or 20.11.3.216 NMAC for a given pollutant and NAAQS if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in Table 1 of Subsection B of 20.11.3.206 NMAC is still required, including the hot-spot requirements for projects in CO [~~and~~] PM_{10} and $PM_{2.5}$ areas.

K. Areas with insignificant motor vehicle emissions: Notwithstanding the other subsections of 20.11.3.206 NMAC, an area is not required to satisfy a regional emissions analysis for 20.11.3.215 NMAC [~~and/or~~] or 20.11.3.216 NMAC for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and

NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in Table 1 in Subsection B of 20.11.3.206 NMAC is still required, including regional emissions analyses for 20.11.3.215 NMAC [~~and/or~~] or 20.11.3.216 NMAC for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO, [~~and~~] PM_{10} and $PM_{2.5}$ areas in 20.11.3.213 NMAC shall also be satisfied, unless EPA determines that the SIP also demonstrates that projects will not create new localized violations [~~and/or~~] or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

L. Isolated rural nonattainment and maintenance areas: This subsection applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of 20.11.3.207 NMAC, 20.11.3.208 NMAC, 20.11.3.209 NMAC, 20.11.3.213 NMAC, 20.11.3.214 NMAC and Subsection D of 20.11.3.210 NMAC. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects shall also satisfy the requirements of Subsection B of 20.11.3.213 NMAC [~~("Localized CO and PM_{10} violations (hot-spots)")~~].

(2) Isolated rural nonattainment and maintenance areas are subject to the budget [~~and/or~~] or interim emissions tests as described in Subsections C through K of 20.11.3.206 NMAC, with the following modifications.

(a) When the requirements of Subsection D of 20.11.3.203 NMAC, 20.11.3.213 NMAC, 20.11.3.215 NMAC and 20.11.3.216 NMAC apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP that are in the rural nonattainment or maintenance area. When the requirements of Subsection D of 20.11.3.203 NMAC apply to isolated rural nonattainment and maintenance areas, references to "MPO" shall be taken to mean the state department of transportation.

(b) In isolated rural nonattainment and maintenance areas that are subject to 20.11.3.215 NMAC, FHWA/FTA projects shall be consistent with motor vehicle emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects shall satisfy one of the following requirements:

(i) 20.11.3.215 NMAC;

(ii) 20.11.3.216 NMAC (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of 20.11.3.216 NMAC);

(iii) as demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the timeframe of the statewide transportation plan, shall not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; control measures assumed in the analysis shall be enforceable.

(c) The choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection L of 20.11.3.206 NMAC and the methodology used to meet the requirements of Item (iii) of Subparagraph (b) of Paragraph (2) of Subsection L of 20.11.3.206 NMAC shall be determined through the interagency consultation process required in Subparagraph (h) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC through which the relevant recipients of Title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the state air quality agency and the state DOT shall reach consensus about the option and methodology selected. EPA and DOT shall be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure in Subsection E of 20.11.3.202 NMAC, which applies for any state air agency comments on a conformity determination.

[7/1/98; 20.11.3.206 NMAC - Rn, 20 NMAC 11.03.II.7, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.207 CRITERIA AND PROCEDURES: LATEST PLANNING ASSUMPTIONS:

A. Except as provided in Subsection A of 20.11.3.207 NMAC, the conformity determination, with respect to all other applicable criteria in 20.11.3.208 NMAC through 20.11.3.216 NMAC, shall be based upon the most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination shall satisfy the requirements of Subsections B through F of 20.11.3.207 NMAC using the planning assumptions available at the time the conformity analysis begins as determined through the interagency consultation process required in Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.202 NMAC. The "time the conformity analysis begins" for a transportation plan or TIP determination is the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan or TIP on travel [~~and/or~~] or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through the interagency consultation procedures described in 20.11.3.202 NMAC.

B. Assumptions shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC. The conformity determination shall also be based on the latest assumptions about current and future background concentrations.

C. The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

D. The conformity determination shall include reasonable assump-

tions about transit service and increases in transit fares and road and bridge tolls over time. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

E. The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures that have already been implemented. This information shall be made as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

F. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by 20.11.3.202 NMAC.

[7/1/98; 20.11.3.207 NMAC - Rn, 20 NMAC 11.03.II.8, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.211 CRITERIA AND PROCEDURES: CURRENTLY CONFORMING TRANSPORTATION PLAN AND TIP: There shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval, or a project must meet the requirements in Subsection F of 20.11.3.201 NMAC during the 12-month lapse grace period.

A. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP shall also lapse if conformity is not determined according to the frequency requirements specified in 20.11.3.201 NMAC.

B. This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of 20.11.3 NMAC are satisfied.

[7/1/98; 20.11.3.211 NMAC - Rn, 20 NMAC 11.03.II.12, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.212 CRITERIA AND PROCEDURES: PROJECTS FROM A TRANSPORTATION PLAN AND TIP:

A. The project shall come from a conforming plan and program: If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of Subsection B of 20.11.3.206 NMAC for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of Subsection B of 20.11.3.212 NMAC and from a conforming program if it meets the requirements of Subsection C of 20.11.3.212 NMAC. Special provisions for TCMs in an applicable implementation plan are provided in Subsection D of 20.11.3.212 NMAC.

B. A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) for projects that are required to be identified in the transportation plan in order to satisfy 20.11.3.203 NMAC (content of transportation plans), the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) for projects that are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and shall not interfere with other projects specifically included in the transportation plan.

C. A project is considered to be from a conforming program if the following conditions are met:

(1) the project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those that were described in the TIP; and

(2) if the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures shall be obtained from the project sponsor or operator as required by Subsection A of 20.11.3.222 NMAC in order for the project to be considered from a conforming program; any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

D. TCMs: This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

E. Notwithstanding the requirements of Subsections A, B and C of 20.11.3.212 NMAC, a project shall meet the requirements of Subsection F of 20.11.3.201 during the 12-month lapse grace period.

[7/1/98; 20.11.3.212 NMAC - Rn, 20 NMAC 11.03.II.13, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.213 CRITERIA AND PROCEDURES: LOCALIZED CO, [~~AND~~] PM_{10} AND $PM_{2.5}$ VIOLATIONS (hot-spots):

A. Subsection A of 20.11.3.213 NMAC applies at all times. The FHWA/FTA project shall not cause or contribute to any new localized CO, [~~or~~] PM_{10} or $PM_{2.5}$ violations or increase the frequency or severity of any existing CO, [~~or~~] PM_{10} or $PM_{2.5}$ violations in CO, [~~and~~] PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas. This criterion is satisfied without a hot-spot analysis in PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas for FHWA/FTA projects that are not identified in Paragraph (1) of Subsection B of 20.11.3.220 NMAC. This criterion is satisfied for all other FHWA/FTA projects in CO, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan [~~(or regional emissions analysis)~~] no new local violations shall be created and the severity or number of existing violations shall not be increased as a result of the project. The demonstration shall be performed according to the consultation requirements of Paragraph (1) of Subsection D of 20.11.3.202 NMAC and the methodology requirements of 20.11.3.220 NMAC.

B. Subsection B of 20.11.3.213 NMAC applies for CO nonattainment areas as described in Paragraph (1) of Subsection F of 20.11.3.206 NMAC. Each FHWA/FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations shall be eliminated or reduced in severity and number as a result of the project. The demonstration shall be performed according to the consultation requirements of Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC and the methodology requirements of 20.11.3.220 NMAC.

[7/1/98; 20.11.3.213 NMAC - Rn, 20 NMAC 11.03.II.14, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.215 CRITERIA AND PROCEDURES: MOTOR VEHICLE EMISSIONS BUDGET:

A. The transportation plan, TIP and project not from a conforming

transportation plan and TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in Subsections C through L of 20.11.3.206 NMAC. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in Subsection C of 20.11.3.215 NMAC are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

B. Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each year for which the applicable ([~~and/or~~] or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the timeframe of the transportation plan and conformity determination), for the last year of the [~~transportation plan's forecast period~~] timeframe of the conformity determination (as described under Subsection D of 20.11.3.203 NMAC), and for any intermediate years within the timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are no more than 10 years apart, as follows.

(1) Until a maintenance plan is submitted:

(a) emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) shall be less than or equal to that years motor vehicle emissions budget(s); and

(b) emissions in years for which no motor vehicle emissions budget(s) are specifically established shall be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year; for example, emissions in years after the attainment year for which the implementation plan does not establish a budget shall be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) When a maintenance plan has been submitted:

(a) emissions shall be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets; if the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emission budget(s) shall be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan; the interagency consultation process required by 20.11.3.202 NMAC shall determine what shall be considered in order to make such a finding;

(b) for years after the last year of the maintenance plan, emissions shall be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan;

(c) if an approved [~~and/or~~] or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years shall be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and

(d) for any analysis years before the last year of the maintenance plan, emissions shall be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

C. Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each pollutant or pollutant precursor in Subsection B of 20.11.3.2 NMAC for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

D. Consistency with the motor vehicle emissions budget(s) shall be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) shall be demonstrated with a regional emissions analysis that meets the requirements of 20.11.3.219 NMAC and Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

(2) The regional emissions analysis may be performed for any years in the timeframe of the [~~transportation plan~~] conformity determination (as described under Subsection D of 20.11.3.203 NMAC) provided they are not more than 10 years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan and conformity determination) and the last year of the [~~plan's forecast period~~] timeframe of the conformity determination. Emissions in years for which consistency with motor vehicle emissions budgets shall be demonstrated, as required in Subsection B of 20.11.3.215 NMAC, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(3) When the timeframe of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.11.3.203 NMAC, the conformity determination shall be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends beyond the timeframe of the conformity determination).

E. Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans:

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans shall be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes and the adequacy finding is effective. However, motor vehicle emission budgets in submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

(2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of 20.11.3.215 NMAC. Consistency with the previously established motor vehicle emissions budget(s) shall be demonstrated. If there are no previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emission tests required by 20.11.3.216 NMAC shall be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination shall remain valid. Projects included in that transportation plan or TIP could still satisfy 20.11.3.211 NMAC and 20.11.3.212 NMAC, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA shall not find a motor

vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(a) the submitted control strategy implementation plan revision or maintenance plan was endorsed by the governor (or his designee) and was subject to a state public hearing;

(b) before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, state and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(c) the motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(d) the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment or maintenance (whichever is relevant to the given implementation plan submission);

(e) the motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(f) revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see 20.11.3.7 NMAC for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA shall review the state's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA shall document its consideration of such comments and responses in a letter to the state indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of 20.11.3.215 NMAC are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations shall be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget shall cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

F. Adequacy review process for implementation plan submissions: EPA will use the procedure listed in Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.215 NMAC to review the adequacy of an implementation plan submission.

(1) When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan,

(a) EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy;

(b) the public will have a minimum of 30 days to comment on the adequacy of the implementation plan submission; if the complete implementation plan is not accessible electronically through the internet and a copy is requested within 15 days of the date of the website notice, the comment period will be extended for 30 days from the date that a copy of the implementation plan is mailed;

(c) after the public comment period closes, EPA will inform the state in writing whether EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the state process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under Subparagraph (c) of Paragraph (2) of Subsection F of 20.11.3.215 NMAC;

(d) EPA will publish a federal register notice to inform the public of EPA's finding; if EPA finds the submission adequate, the effective date of this finding will be 15 days from the date the notice is published as established in the federal register notice, unless EPA is taking a final approval action on the SIP as described in Subparagraph (c) of Paragraph (2) of Subsection F of 20.11.3.215 NMAC;

(e) EPA will announce whether the implementation plan submission is adequate or inadequate for use in transportation conformity on EPA's website; the website will also include EPA's response to comments if any comments were received during the public comment period;

(f) if after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.215 NMAC unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission; in all cases where EPA reverses its previous finding to a finding of inadequacy under Paragraph 1 of Subsection F of 20.11.3.215 NMAC, such a finding will become effective immediately upon the date of EPA's letter to the state;

(g) if after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.215 NMAC.

(2) When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan,

(a) EPA's federal register notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy;

(b) the publication of the notice of proposed rulemaking will start a public comment period of at least 30 days;

(c) EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in Subparagraphs (c) through (e) of Paragraphs (1) of Subsection F of 20.11.3.215 NMAC; if EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of EPA's approval in the federal register, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking; EPA will respond to comments received directly and review comments submitted through the state process and include the response to comments in the applicable docket.

[7/1/98; 20.11.3.215 NMAC - Rn, 20 NMAC 11.03.II.16, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.216 CRITERIA AND PROCEDURES: INTERIM EMISSIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS:

A. The transportation plan, TIP and project not from a conforming transportation plan and TIP shall satisfy the interim emissions test(s) as described in Subsections C through L of 20.11.3.206 NMAC. This criterion applies to the net effect of the action (transportation plan, TIP or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation

system.

B. Ozone areas: The requirements of Subsection B of 20.11.3.216 NMAC apply to all 1-hour ozone and 8-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met:

(1) in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G through J of 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.216 NMAC:

(a) the emissions predicted in the "action" scenario are less than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(b) the emissions predicted in the "action" scenario are lower than:

(i) 1990 emissions by any nonzero amount, in areas for the 1-hour ozone NAAQS as described in Subsection C of 20.11.3.206 NMAC; or

(ii) 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as described in Subsection D and Subsection E of 20.11.3.206 NMAC;

(2) in marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G through J of 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.216 NMAC:

(a) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(b) the emissions predicted in the "action" scenario are not greater than:

(i) 1990 emissions, in areas for the 1-hour ozone NAAQS as described in Subsection C of 20.11.3.206 NMAC; or

(ii) 2002 emissions, in areas for the 8-hour ozone NAAQS as described in Subsection D and Subsection E of 20.11.3.206 NMAC.

C. CO areas: This criterion may be met:

(1) in moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas that are subject to CAA Section 187(a)(7) if a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G through J of 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.216 NMAC:

(a) the emissions predicted in the "action" scenario are less than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(b) the emissions predicted in the "action" scenario are lower than 1990 emissions by any nonzero amount;

(2) in moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G through J of 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.216 NMAC:

(a) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(b) the emissions predicted in the "action" scenario are not greater than 1990 emissions.

D. PM_{10} and NO_2 areas: This criterion may be met in PM_{10} and NO_2 nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G through J of 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.216 NMAC, one of the following requirements is met:

(1) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) the emissions predicted in the "action" scenario are not greater than baseline emissions; baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

E. $PM_{2.5}$ areas: This criterion may be met in $PM_{2.5}$ nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G through J of 20.11.3.216 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.216 NMAC, one of the following requirements is met:

(1) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) the emissions predicted in the "action" scenario are not greater than 2002 emissions.

F. Pollutants: The regional emissions analysis shall be performed for the following pollutants:

(1) VOC in ozone areas;

(2) NO_x in ozone areas, unless the EPA administrator determines that additional reductions of NO_x would not contribute to attainment;

(3) CO in CO areas;

(4) PM_{10} in PM_{10} areas;

(5) VOC [~~and/or~~] and NO_x in PM_{10} areas if the EPA regional administrator or the director of the air agency has made a finding that one or both of such precursor emissions from within the area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT;

(6) NO_x in NO_2 areas;

(7) $PM_{2.5}$ in $PM_{2.5}$ areas; [~~and~~]

(8) re-entrained road dust in $PM_{2.5}$ areas only if the EPA regional administrator or the director of the air agency has made a finding that emissions from re-entrained road dust within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT;

(9) NO_x in $PM_{2.5}$ areas, unless the EPA regional administrator and the director of the state air agency have made a finding that emissions of NO_x from within the area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT; and

(10) VOC, SO_2 and ammonia in $PM_{2.5}$ areas if the EPA regional administrator or the director of the state air agency has made a finding that any of such precursor emissions from within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT.

G. Analysis Years:

(1) The regional emissions analysis shall be performed for analysis years that are no more than 10 years apart. The first analysis year shall be no more than five years beyond the year in which the conformity determination is being made. The last year of the [~~transportation plan's forecast period~~] timeframe of the conformity

determination (as described under Subsection D of 20.11.3.203 NMAC) shall also be an analysis year.

(2) For areas using Subparagraph (a) of Paragraph (2) of Subsection B, Subparagraph (a) of Paragraph (2) of Subsection C, Paragraph (1) of Subsection D and Paragraph (1) of Subsection E of 20.11.3.216 NMAC, a regional emissions analysis that satisfies the requirements of 20.11.3.219 NMAC and Subsections G through J of 20.11.3.216 NMAC would not be required for analysis years in which the transportation projects and planning assumptions in the action and "baseline" scenarios are exactly the same. In such a case, Subsection A of 20.11.3.216 NMAC can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario for such analysis years.

(3) When the timeframe of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.11.3.203 NMAC, the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan.

H. "Baseline" scenario: The regional emissions analysis required by Subsections B through E of 20.11.3.216 NMAC shall estimate the emissions that would result from the "baseline" scenario in each analysis year. The "baseline" scenario shall be defined for each of the analysis years. The "baseline" scenario is the future transportation system that shall result from current programs; including the following (except that exempt projects list in 20.11.3.223 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.224 NMAC need not be explicitly considered):

(1) all in-place regionally significant highway and transit facilities, services and activities;

(2) all ongoing travel demand management or transportation system management activities; and

(3) completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan [~~and/or~~] or TIP; or have completed the NEPA process.

I. "Action" scenario: The regional emissions analysis required by Subsections B through E of 20.11.3.216 NMAC shall estimate the emissions that would result from the "action" scenario in each analysis year. The "action" scenario shall be defined for each of the analysis years. The "action" scenario is the transportation system that would result from the implementation of the proposed action (MTP, TIP or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "action" scenario shall include the following (except that exempt projects listed in 20.11.3.223 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.224 NMAC need not be explicitly considered):

(1) all facilities, services and activities in the "baseline" scenario;

(2) completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which shall be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) all travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted [~~and/or~~] or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

(4) the incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted [~~and/or~~] or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

J. Projects not from a conforming transportation plan and TIP: For the regional emissions analysis required by Subsections B through E of 20.11.3.216 NMAC, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "baseline" scenario shall include the project with its original design concept and scope, and the "action" scenario shall include the project with its new design concept and scope.

[7/1/98; 20.11.3.216 NMAC - Rn, 20 NMAC 11.03.II.17, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.217 CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN FAILURES:

A. Disapprovals:

(1) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under Section 179(b)(1) of the CAA. No new transportation plan, TIP or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first [~~three~~] four years of the currently conforming transportation plan and TIP or that meet the requirements of Subsection F of 20.11.3.201 NMAC during the 12-month lapse grace period may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP or project not in the first [~~three~~] four years of the currently conforming transportation plan and TIP or that meets the requirements of Subsection F of 20.11.3.201 NMAC during the 12-month lapse grace period may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to 20.11.3.215 NMAC or approves the submission, and conformity to the implementation plan revision is determined.

(3) In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

B. Failure to submit and incompleteness: In areas where EPA notifies the state, MPO and DOT of the state's failure to submit a control strategy implementation plan or submission of an incom-

plete control strategy implementation plan revision (either of which initiates the sanction process under CAA Sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under Section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA regional administrator.

C. Federal implementation plans: If EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by 20.11.3.217 NMAC because of that failure is removed.

[7/1/98; 20.11.3.217 NMAC - Rn, 20 NMAC 11.03.II.18, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.218 REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY OTHER RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS.

A. Except as provided in Subsection B of 20.11.3.218 NMAC, no recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project comes from the currently conforming transportation plan and TIP (or meets the requirements of Subsection F of 20.11.3.201 NMAC during the 12-month lapse grace period), and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;

(2) the project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (or meets the requirements of Subsection F of 20.11.3.201 NMAC during the 12-month lapse grace period), even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or

(3) a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of 20.11.3.215 NMAC [~~and/or~~] or 20.11.3.216 NMAC for a project not from a conforming transportation plan and TIP).

B. In isolated rural nonattainment and maintenance areas subject to Subsection L of 20.11.3.206 NMAC, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope have not changed significantly; or

(2) a new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements 20.11.3.215 NMAC [~~and/or~~] or 20.11.3.216 NMAC for projects not from a conforming transportation plan and TIP).

C. Notwithstanding Subsection A and Subsection B of 20.11.3.218 NMAC, in nonattainment and maintenance areas subject to Subsection J or Subsection K of 20.11.3.206 NMAC for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met for that pollutant/precursor and NAAQS:

(1) the project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or

(2) the project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope have not changed significantly.

[7/1/98; 20.11.3.218 NMAC - Rn, 20 NMAC 11.03.II.19, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.219 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED EMISSIONS:

A. General requirements:

(1) The regional emissions analysis required by 20.11.3.215 NMAC and 20.11.3.216 NMAC for the transportation plan, TIP or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by 20.11.3.202 NMAC. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects shall be estimated in accordance with reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

(2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:

(a) the regulatory action is already adopted by the enforcing jurisdiction;

(b) the project, program or activity is included in the applicable implementation plan;

(c) the control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of 20.11.3.215 NMAC contains a written commitment to the project, program or activity by the agency with authority to implement it; or

(d) EPA has approved an opt-in to a federally enforced program, EPA has promulgated the program (if the control program is a federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date or not imple-

ment the program.

(4) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

(a) Persons or entities voluntarily committing to control measures shall comply with the obligations of such commitments.

(b) The conformity implementation plan revision required in 40 CFR 51.390 shall provide that written commitments to control measures that are not included in the transportation plan and TIP shall be obtained prior to a conformity determination and that such commitments shall be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of 20.11.3.216 NMAC shall make the same assumptions in both the baseline and "action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, shall be consistent with the applicable implementation plan, unless modified after interagency consultation according to Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

B. Regional emissions analysis in serious, severe and extreme ozone nonattainment areas and serious CO nonattainment areas shall meet the requirements of Paragraphs (1) through (3) of Subsection B of 20.11.3.219 NMAC if their metropolitan planning area contains an urbanized area population over 200,000.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations shall be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods and practices are available from DOT and shall be updated periodically. Agencies shall discuss these modeling procedures and practices through the interagency consultation process as required by Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC. Network-based travel models shall at a minimum satisfy the following requirements:

(a) network-based travel models shall be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than 10 years prior to the date of the conformity determination; model forecasts shall be analyzed for reasonableness and compared to historical trends and other factors, and the results shall be documented;

(b) land use, population, employment and other network-based travel model assumptions shall be documented and based on the best available information; future speeds shall be determined through interagency consultation as described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC;

(c) scenarios of land development and use shall be consistent with the future transportation system alternatives for which emissions are being estimated; the distribution of employment and residences for different transportation options shall be reasonable;

(d) a capacity-sensitive assignment methodology shall be used, and emissions estimates shall be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;

(e) zone-to-zone travel impedances used to distribute trips between origin and destination pairs shall be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes and shall be determined through interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC; where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times shall also be used for modeling mode splits; and

(f) network-based travel models shall be reasonably sensitive to changes in the time(s), cost(s) and other factors affecting travel choices.

(2) Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.

(3) Highway performance monitoring system (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration shall be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

C. Two-year grace period for regional emissions analysis requirements in certain ozone and CO areas: The requirements of Subsection B of 20.11.3.219 NMAC apply to such areas or portions of such areas that have not previously been required to meet these requirements for any existing NAAQS two years from the following:

(1) the effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) the official notice by the census bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or

(3) the effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

D. In all areas not otherwise subject to Subsection B of 20.11.3.219 NMAC, regional emissions analyses shall use those procedures described in Subsection B of 20.11.3.219 NMAC if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to Subsection B of 20.11.3.219 NMAC may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per

person. These methods shall also consider future economic activity, transit alternatives and transportation system policies.

E. PM_{10} from construction-related fugitive dust:

(1) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM_{10} nonattainment and maintenance areas with implementation plans that identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan and the dust-producing capacity of the proposed activities.

F. $PM_{2.5}$ from construction-related fugitive dust:

(1) For $PM_{2.5}$ areas in which the implementation plan does not identify construction-related fugitive $PM_{2.5}$ as a significant contributor to the nonattainment problem, the fugitive $PM_{2.5}$ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In $PM_{2.5}$ nonattainment and maintenance areas with implementation plans that identify construction-related fugitive $PM_{2.5}$ as a significant contributor to the nonattainment problem, the regional $PM_{2.5}$ emissions analysis shall consider construction-related fugitive $PM_{2.5}$ and shall account for the level of construction activity, the fugitive $PM_{2.5}$ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

G. Reliance on previous regional emissions analysis:

(1) Conformity determinations for a new transportation plan [~~and/or~~] or TIP may be demonstrated to satisfy the requirements of 20.11.3.215 NMAC (motor vehicle emissions budget) or 20.11.3.216 NMAC (interim emissions in areas without motor vehicle emissions budgets) without new regional emissions analysis if the previous regional emissions analysis also applies to the new plan [~~and/or~~] or TIP. This requires a demonstration that:

(a) the new plan [~~and/or~~] or TIP contains all projects that shall be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan;

(b) all plan and TIP projects that are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's [~~and/or~~] or TIP's regional emissions at the time of the previous conformity determination;

(c) the design concept and scope of each regionally significant project in the new plan [~~and/or~~] or TIP are not significantly different from that described in the previous transportation plan; and

(d) the previous regional emissions analysis is consistent with the requirements of 20.11.3.215 NMAC (including that conformity to all currently applicable budgets is demonstrated) [~~and/or~~] or 20.11.3.216 NMAC, as applicable.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of 20.11.3.215 NMAC or 20.11.3.216 NMAC without additional regional emissions analysis if allocating funds to the project shall not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan the previous regional emissions analysis is still consistent with the requirements of 20.11.3.215 NMAC (including that conformity to all currently applicable budgets is demonstrated) [~~and/or~~] or 20.11.3.216 NMAC, as applicable, and if the project is either:

(a) not regionally significant; or

(b) included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

(3) A conformity determination that relies on Subsection G of 20.11.3.219 NMAC does not satisfy the frequency requirements of Subsection B or Subsection C of 20.11.3.201 NMAC.

[7/1/98; 20.11.3.219 NMAC - Rn, 20 NMAC 11.03.II.20, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.220 PROCEDURES FOR DETERMINING LOCALIZED CO, [~~AND~~] PM_{10} AND $PM_{2.5}$ CONCENTRATIONS (Hot-Spot Analysis):

A. CO hot spot analysis:

(1) The demonstrations required by 20.11.3.213 NMAC (Criteria and Procedures: Localized CO, [~~and~~] PM_{10} and $PM_{2.5}$ Violations) shall be based on quantitative analysis using the applicable air quality models, data bases and other requirements specified in 40 CFR Part 51, Appendix W (guideline on air quality models). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in 20.11.3.202 NMAC and approved by the EPA regional administrator are used for:

(a) projects in or affecting locations, areas or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

(b) projects affecting intersections that are at level-of-service D, E or F, or those that shall change to level-of-service D, E or F because of increased traffic volumes related to the project;

(c) any project affecting one or more of the top three intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan or which are identified through the interagency consultation process as described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC; and

(d) any project affecting one or more of the top three intersections in the nonattainment or maintenance area with the worst level of service, as identified in the applicable implementation plan or which are identified through the interagency consultation process as described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

(2) In cases other than those described in Paragraph (1) of Subsection A of 20.11.3.220 NMAC, the demonstrations required by 20.11.3.213 NMAC may be based on either:

(a) quantitative methods that represent reasonable and common professional practice as determined through the interagency consultation process, described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC; or

(b) a qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of 20.11.3.213 NMAC are met.

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that Subsection A of 20.11.3.213 NMAC is met without further hot-spot analysis for any project described in Paragraphs (1) and (2) of Subsection A of 20.11.3.220 NMAC based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given CO nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

B. PM_{10} and $PM_{2.5}$ hot-

spot [~~analysis~~] analyses:

(1) The hot-spot demonstration required by 20.11.3.213 NMAC shall be based on quantitative analysis methods for the following types of projects:

[~~(a) projects located at sites at which violations have been verified by monitoring;~~

~~(b) projects located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and~~]

(a) new highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;

(b) projects affecting intersections that are at level-of-service D, E, or F with a significant number of diesel vehicles, or those that will change to level-of-service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;

(c) new bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location;

[~~(c)~~](d) [~~new or~~] expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location; and

(e) projects in or affecting locations, areas, or categories of sites which are identified in the PM_{10} or $PM_{2.5}$ applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

(2) Where quantitative analysis methods are not [~~required~~] available, the demonstration required by 20.11.3.213 NMAC [~~may~~] for projects described in Paragraph (1) of Subsection B of 20.11.3.220 NMAC shall be based on a qualitative consideration of local factors.

(3) [~~The identification of the sites described in Subparagraph (a) and Subparagraph (b) of Paragraph (1) of Subsection B of 20.11.3.220 NMAC, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in 20.11.3.202 NMAC. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations and activity levels.~~] DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that 20.11.3.213 NMAC is met without further hot-spot analysis for any project described in Paragraph (1) of Subsection B of 20.11.3.220 NMAC based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given $PM_{2.5}$ or PM_{10} nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

(4) The requirements for quantitative analysis contained in Subsection B of 20.11.3.220 NMAC shall not take effect until EPA releases modeling guidance on this subject and announces in the federal register that these requirements are in effect.

C. General requirements:

(1) Estimated pollutant concentrations shall be based on the total emissions burden that may result from the implementation of the project, summed together with future background concentrations. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

(2) Hot-spot analyses shall include the entire project, and may be performed only after the major design features that shall significantly impact concentrations have been identified. The future background concentration shall be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors as determined through the interagency consultation process described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

(3) Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses as determined through the interagency consultation process described in Paragraph (1) of Subsection D of 20.11.3.202 NMAC.

(4) CO, PM_{10} or [~~CO~~] $PM_{2.5}$ mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor [~~and/or~~] or operator to implement such measures, as required by Subsection A of 20.11.3.222 NMAC.

(5) CO, [~~and~~] PM_{10} and $PM_{2.5}$ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site that is affected by construction-related activities shall be considered separately through the interagency consultation process described in Paragraph (1) of Subsection B of 20.11.3.202 NMAC, using established guideline methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

[7/1/98; 20.11.3.220 NMAC - Rn, 20 NMAC 11.03.II.21, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.221 USING THE MOTOR VEHICLE EMISSIONS BUDGET IN THE APPLICABLE IMPLEMENTATION PLAN (OR IMPLEMENTATION PLAN SUBMISSION):

A. In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment or maintenance requirement and explicitly states an intent that some or all of this additional amount shall be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) emissions from all sources shall be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) emissions from all sources shall result in achieving attainment prior to the attainment deadline [~~and/or~~] or ambient concentrations in the attainment deadline year shall be lower than needed to demonstrate attainment; or

(3) emissions shall be lower than needed to provide for continued maintenance.

B. A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades.

C. If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

D. If a nonattainment area includes more than one MPO, the imple-

mentation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs shall collectively make a conformity determination for the entire nonattainment area.

[7/1/98; 20.11.3.221 NMAC - Rn, 20 NMAC 11.03.II.22, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.222 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES:

A. Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA or FTA shall obtain from the project sponsor [~~and/or~~] or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures that are identified as conditions for NEPA process completion with respect to local PM_{10}, $PM_{2.5}$ or CO impacts. Before a conformity determination is made, written commitments shall also be obtained for project-level mitigation or control measures that are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by 20.11.3.215 NMAC (motor vehicle emissions budget) and 20.11.3.216 NMAC (interim emissions in areas without motor vehicle emissions budgets) or used in the project-level hot-spot analysis required by 20.11.3.213 NMAC.

B. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of such commitments.

C. The implementation plan revision required in 40 CFR 51.390 shall provide that written commitments to mitigation measures shall be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

D. If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of 20.11.3.213 NMAC, emission budget requirements of 20.11.3.215 NMAC, and interim emissions requirements of 20.11.3.216 NMAC are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under 20.11.3.202 NMAC. The MPO and DOT shall find that the transportation plan and TIP still satisfy the applicable requirements of 20.11.3.215 NMAC [~~and/or~~] or 20.11.3.216 NMAC and that the project still satisfies the requirements of 20.11.3.213 NMAC, and therefore that the conformity determinations for the transportation plan, TIP and project are still valid. This finding is subject to the applicable public consultation requirements in Subsection F of 20.11.3.202 NMAC for conformity determinations for projects.

[7/1/98; 20.11.3.222 NMAC - Rn, 20 NMAC 11.03.II.23, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.223 EXEMPT PROJECTS: Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 2 of 20.11.3.223 NMAC are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of 20.11.3.223 NMAC is not exempt if the MPO in consultation with other agencies (see Subparagraph (c) of Paragraph (1) of Subsection D of 20.11.3.202 NMAC), the EPA and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs shall ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

TABLE 2. EXEMPT PROJECTS

SAFETY

Railroad/highway crossing

[~~Hazard elimination program~~] Projects that correct, improve or eliminate a hazardous location or feature

Safer non-federal-aid system roads

Shoulder improvements

Increasing sight distance

Highway safety improvement program implementation

Traffic control devices and operating assistance other than signalization projects

Railroad/highway crossing warning devices

Guardrails, median barriers, crash cushions

Pavement resurfacing [~~and/or~~] or rehabilitation

Pavement marking [~~demonstration~~]

Emergency relief (23 U.S.C. 125)

Fencing

Skid treatments

Safety roadside rest areas

Adding medians

Truck climbing lanes outside the urbanized area

Lighting improvements

Widening narrow pavements or reconstructing bridges (no additional travel lanes)

Emergency truck pullovers

MASS TRANSIT

Operating assistance to transit agencies

Purchase of support vehicles

Rehabilitation of transit vehicles[1]

Purchase of office, shop and operating equipment for existing facilities

Purchase of operating equipment for vehicles (e.g., radios, fare boxes, lifts, etc.)

Construction or renovation of power, signal and communications systems

Construction of small passenger shelters and information kiosks

Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals and ancillary structures)

Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way

Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet[1]

Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR Part 771

AIR QUALITY

Continuation of ride-sharing and van-pooling promotion activities at current levels

Bicycle and pedestrian facilities

OTHER

Specific activities which do not involve or lead directly to construction, such as:

Planning and technical studies

Grants for training and research programs

Planning activities conducted pursuant to Titles 23 and 49 U.S.C.

Federal-aid systems revisions

Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action
Noise attenuation
Emergency or hardship advance land acquisitions 23 CFR Part 710.503
Acquisition of scenic easements
Plantings, landscaping, etc.
Sign removal
Directional and informational signs
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures or facilities)
Repair of damage caused by natural disasters, civil unrest or terrorist acts, except projects involving substantial functional, locational or capacity changes

Note: [1]In PM_{10} and $PM_{2.5}$ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

[7/1/98; 20.11.3.223 NMAC - Rn, 20 NMAC 11.03.II.24, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.224 PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES: Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 3 of 20.11.3.224 NMAC are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO, $PM_{2.5}$ or PM_{10} concentrations shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of 20.11.3.224 NMAC is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see Subparagraph (c) Paragraph (1) of Subsection D of 20.11.3.202 NMAC), the EPA and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:

TABLE 3. PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

Intersection channelization projects
Intersection signalization projects at individual intersections
Interchange reconfiguration projects
Changes in vertical and horizontal alignment
Truck size and weight inspection stations
Bus terminals and transfer points

[7/1/98; 20.11.3.224 NMAC - Rn, 20 NMAC 11.03.II.25, 6/1/02; A, 6/13/05; A, 12/17/08]

20.11.3.227 SPECIAL EXEMPTIONS FROM CONFORMITY REQUIREMENTS FOR PILOT PROGRAM AREAS: EPA and DOT may exempt no more than six areas for no more than three years from certain requirements of 20.11.3 NMAC if these areas are selected to participate in a conformity pilot program and have developed alternative requirements that have been approved by EPA as an implementation plan revision in accordance with 40 CFR 51.390. For the duration of the pilot program, areas selected to participate in the pilot program shall comply with the conformity requirements of the pilot area's implementation plan revision for 40 CFR 51.390 and all other requirements in 40 CFR Parts 51 and 93 that are not covered by the pilot area's implementation plan revision for 40 CFR 51.390. The alternative conformity requirements in conjunction with any applicable state [~~and/or~~] or federal conformity requirements shall be proposed to fulfill all of the requirements of and achieve results equivalent to or better than Section 176(c) of the Clean Air Act. After the three-year duration of the pilot program has expired, areas will again be subject to all of the requirements of 20.11.3 NMAC and 40 CFR Part 51, Subpart T, [~~and/or~~] or to the requirements of any implementation plan revision that was previously approved by EPA in accordance with 40 CFR 51.390.

[20.11.3.227 NMAC - N, 6/13/05; A, 12/17/08]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.1 NMAC (filed 4/27/2001) entitled General Provisions and Definitions, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.2 NMAC (filed 1/21/2004) entitled General Operating Practices, Wastes Arising from Exploration and Production, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.3 NMAC (filed 10/29/2001) entitled Drilling, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.4 NMAC (filed 11/29/2001) entitled Plugging and Abandonment of Wells, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.5 NMAC (filed 4/27/2000) entitled Oil Production Operating Practices, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.6 NMAC (filed 11/29/2001) entitled Natural Gas Production Operating Practice, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.7 NMAC (filed 5/21/2002) entitled Oil Proration and Allocation, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.8 NMAC (filed 4/08/2003) entitled Gas Proration and Allocation, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.9 NMAC (filed 11/13/2000) entitled Secondary or Other Enhanced Recovery, Pressure

Maintenance, Salt Water Disposal, and Underground Storage, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.10 NMAC (filed 4/16/2003) entitled Oil Purchasing and Transporting, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.11 NMAC (filed 9/10/2003) entitled Gas Purchasing and Transporting, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.12 NMAC (filed 10/01/2003) entitled Refining, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.13 NMAC (filed 6/17/2004) entitled Reports, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.14 NMAC (filed 9/16/2005) entitled Procedure, effective December 1, 2008.

The Energy, Minerals and Natural Resources Department, Oil Conservation Division repeals its rule 19.15.15 NMAC (filed 7/12/2004) entitled Administration, effective December 1, 2008.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 2 GENERAL PROVISIONS FOR OIL AND GAS OPERATIONS

19.15.2.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.2.1 NMAC - Rp, 19.15.1.1 NMAC, 12/1/08]

19.15.2.2 SCOPE: 19.15.2 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico and to 19.15.2 NMAC through 19.15.39 NMAC.
[19.15.2.2 NMAC - Rp, 19.15.1.2 NMAC, 12/1/08]

19.15.2.3 STATUTORY AUTHORITY: 19.15.2 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, which grants the oil conservation division jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations.
[19.15.2.3 NMAC - Rp, 19.15.1.3 NMAC, 12/1/08]

19.15.2.4 DURATION: Permanent.
[19.15.2.4 NMAC - Rp, 19.15.1.4 NMAC, 12/1/08]

19.15.2.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.2.5 NMAC - Rp, 19.15.1.5 NMAC, 12/1/08]

19.15.2.6 OBJECTIVE: To set forth general provisions and definitions pertaining to the authority of the oil conservation division and the oil conservation commission pursuant to the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38.
[19.15.2.6 NMAC - Rp, 19.15.1.6 NMAC, 12/1/08]

19.15.2.7 DEFINITIONS: These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

A. Definitions beginning with the letter "A".

(1) "Abate" means to investigate, contain, remove or mitigate water pollution.

(2) "Abatement" means the investigation, containment, removal or other mitigation of water pollution.

(3) "Abatement plan" means a description of operational, monitoring, contingency and closure requirements and conditions for water pollution's prevention, investigation and abatement.

(4) "ACT" means automatic custody transfer.

(5) "Adjoining spacing units" mean those existing or prospective spacing units in the same pool that are touching at a point or line on the subject spacing unit.

(6) "Adjusted allowable" means the allowable production a well or proration unit receives after all adjustments are made.

(7) "AFE" means authorization for expenditure.

(8) "Allocated pool" means a pool in which the total oil or gas production is restricted and is allocated to various wells in the pool in accordance with proration schedules.

(9) "Allowable production" means that number of barrels of oil or cubic feet of gas the division authorizes to be produced from an allocated pool.

(10) "APD" means application for permit to drill.

(11) "API" means the American petroleum institute.

(12) "Approved temporary abandonment" means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and is in compliance with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

(13) "Aquifer" means a geological formation, group of formations or a part of a formation that is capable of yielding a significant amount of water to a well or spring.

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

B. Definitions beginning with the letter "B".

(1) "Back allowable" means the authorization for production of an underproduction resulting from pipeline proration.

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

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

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

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

rounding ground surface's elevation and is surrounded by berms.

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

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

(8) "BLM" means the United States department of the interior, bureau of land management.

(9) "Bottom hole pressure" means the gauge pressure in psi under conditions existing at or near the producing horizon.

(10) "Bradenhead gas well" means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

(11) "BS&W" means basic sediments and water.

(12) "BTEX" means benzene, toluene, ethylbenzene and xylene.

C. Definitions beginning with the letter "C".

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

(2) "Casinghead gas" means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

(3) "Cm/sec" means centimeters per second.

(4) "CPD" means central point delivery.

(5) "Combination multiple completion" means a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well bore, the conventional diameter strings of which might or might not be a conventional multiple completion.

(6) "Commission" means the oil conservation commission.

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

(8) "Common purchaser for gas" means a person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

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

(10) "Common source of supply". See pool.

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

(12) "Contiguous" means acreage joined by more than one common point, that is, the common boundary is at least one side of a governmental quarter-quarter section.

(13) "Conventional completion" means a well completion in which the production string of casing has an outside diameter in excess of 2.875 inches.

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

(15) "Correlative rights" means the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.

(16) "Cubic feet of gas or cubic foot of gas" means that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 psi (15.025 psi absolute), at a standard base temperature of 60 degrees fahrenheit.

D. Definitions beginning with the letter "D".

(1) "Deep pool" means a common source of supply that is situated 5000 feet or more below the surface.

(2) "Depth bracket allowable" means the basic oil allowable the division assigns a pool and based on its depth, unit size or special pool orders, which, when multiplied by the market demand percentage factor in effect, determines the pool's top proration unit allowable.

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

(4) "Division" means the New Mexico energy, minerals and natural resources department, oil conservation division.

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

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

(7) "DRO" means diesel range organics.

E. Definitions beginning with the letter "E".

(1) "EC" means electrical conductivity.

(2) "Enhanced oil recovery project" means the use or the expanded use of a process for the displacement of oil from an oil well or division-designated pool other than a primary recovery process, including but not limited to the use of a pressure maintenance process; a water flooding process; an immiscible, miscible, chemical, thermal or biological process; or any other related process.

(3) "EOR project" means an enhanced oil recovery project.

(4) "EPA" means the United States environmental protection agency.

(5) "Exempted aquifer" means an aquifer that does not currently serve as a source of drinking water, and that cannot now and will not in the foreseeable future serve as a source of drinking water because:

(a) it is hydrocarbon producing;

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

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

(6) "Exempt waste" means oil field waste exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(7) "Existing spacing unit" means a spacing unit containing a producing well.

F. Definitions beginning with the letter "F".

(1) "Facility" means a structure, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock or activity of any kind, whether stationary or mobile.

(2) "Field" means the general area that at least one pool underlays or appears to underlay; and also includes the underground reservoir or reservoirs containing oil or gas. The words field and pool mean the same thing when only one underground reservoir is involved; however, field unlike pool may relate to two or more pools.

(3) "Fresh water" to be protected includes the water in lakes and playas (regardless of quality, unless the water exceeds 10,000 mg/l TDS and it can be shown that degradation of the particular water body will not adversely affect hydrologically connected fresh ground water), the surface waters of streams regardless of the water quality within a given reach, and underground waters containing 10,000 mg/l or less of TDS except for which, after notice and hearing, it is found there is no present or reasonably foreseeable beneficial use that contamination of such waters would impair.

G. Definitions beginning with the letter "G".

(1) "Gas", also known as natural gas, means a combustible vapor composed chiefly of hydrocarbons occurring naturally in a pool the division has classified as a gas pool.

(2) "Gas lift" means a method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

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

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

(5) "Gas transportation facility" means a pipeline in operation serving gas wells for the transportation of gas, or some other device or equipment in like operation where the gas produced from gas wells connected with the pipeline or other device or equipment can be transported or used for consumption.

(6) "Gas well" means a well producing gas from a gas pool, or a well with a gas-oil ratio in excess of 100,000 cubic feet of gas per barrel of oil producing from an oil pool.

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

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

(9) "GRO" means gasoline range organics.

(10) "Ground water" means interstitial water that occurs in saturated earth material and is capable of entering a well in sufficient amounts to be used as a water supply.

(11) "Ground water sensitive area" means an area the division specifically designates after evaluation of technical evidence where ground water exists that would likely exceed WQCC standards if contaminants were introduced into the environment.

H. Definitions beginning with the letter "H".

(1) "Hardship gas well" means a gas well where underground waste occurs if the well is shut-in or curtailed below its minimum sustainable flow rate.

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

(3) "Hazardous waste" means non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.

(4) "HDPE" means high-density polyethylene.

(5) "High gas-oil ratio proration unit" means a unit with at least one producing oil well with a gas-oil ratio in excess of the limiting gas-oil ratio for the pool in which the unit is located.

(6) "H_2S" means hydrogen sulfide.

I. Definitions beginning with the letter "I".

(1) "Illegal gas" means gas produced from a gas well in excess of the division-determined allowable.

(2) "Illegal oil" means oil produced in excess of the allowable the division fixes.

(3) "Illegal product" means a product of illegal gas or illegal oil.

(4) "Inactive well" means a well that is not being used for beneficial purposes such as production, injection or monitoring and that is not being drilled, completed, repaired or worked over.

(5) "Injection well" means a well used for the injection of air, gas, water or other fluids into an underground stratum.

J. [RESERVED]

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

L. Definitions beginning with the letter "L".

(1) "Limiting gas-oil ratio" means the gas-oil ratio the division assigns to a particular oil pool to limit the volumes of casinghead gas that may be produced from the various oil producing units within that particular pool.

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

(3) "LLDPE" means linear low-density polyethylene.

(4) "Load oil" means oil or liquid hydrocarbon that has been used in remedial operation in an oil or gas well.

(5) "Log" means a systematic detailed and correct record of formations encountered in drilling a well.

M. Definitions beginning with the letter "M".

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

(2) "Market demand percentage factor" means that percentage factor of 100 percent or less as the division determines at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, determines that pool's top proration unit allowable.

(3) "MCF" means a thousand cubic feet.

(4) "MCFD" means a thousand cubic feet per day.

(5) "MCFGPD" means a thousand cubic feet of gas per day.

(6) "Mg/l" means milligrams per liter.

(7) "Mg/kg" means milligrams per kilogram.

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

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

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

(11) "Miscellaneous hydrocarbons" means tank bottoms occurring at pipeline stations; oil storage terminals or refineries; pipeline break oil; catchings collected in traps, drips or scrubbers by gasoline plant operators in the plants or in the gathering lines serving the plants; the catchings collected in private, community or commercial salt water disposal systems; or other liquid hydrocarbon that is not lease crude or condensate.

N. Definitions beginning with the letter "N".

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

(2) "Non-exempt waste" means oil field waste not exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(3) "Non-hazardous waste" means non-exempt oil field waste that is not hazardous waste.

(4) "Non-marginal unit" means a proration unit that is capable of producing the top proration unit allowable for the pool in which it is located, and to which the division assigns a top proration unit allowable.

(5) "NORM" means the naturally occurring radioactive materials regulated by 20.3.14 NMAC.

O. Definitions beginning with the letter "O".

(1) "Official gas-oil ratio test" means the periodic gas-oil ratio test the operator performs pursuant to division order by the method and in the manner the division prescribes.

(2) "Oil" means petroleum hydrocarbon produced from a well in the liquid phase and that existed in a liquid phase in the reservoir. This definition includes crude oil or crude petroleum oil.

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

(4) "Oil well" means a well capable of producing oil and that is not a gas well as defined in Paragraph (6) of Subsection G of 19.15.2.7 NMAC.

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

(6) "Overproduction" means the amount of oil or gas produced during a proration period in excess of the amount authorized on the proration schedule.

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

P. Definitions beginning with the letter "P".

(1) "Penalized unit" means a proration unit to which, because of an excessive gas-oil ratio, the division assigns an allowable that is less than top proration unit allowable for the pool in which it is located and also less than the ability of the well or wells on the unit to produce.

(2) "Person" means an individual or entity including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or an agency, department or instrumentality of the United States and of its officers, agents or employees.

(3) "Pit" means a surface or subsurface impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for safety, secondary containment and storm water or run-on control.

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

(5) "Pool" means an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other zones in the structure, is covered by the word pool as used in 19.15.2 NMAC through 19.15.39 NMAC. "Pool" is synonymous with "common source of supply" and with "common reservoir".

(6) "Potential" means a well's properly determined capacity to produce oil or gas under division-prescribed conditions.

(7) "Ppm" means parts per million by volume.

(8) "PQL" means practical quantitation limit.

(9) "Pressure maintenance" means the injection of gas or other fluid into a reservoir, either to maintain the reservoir's existing pressure or to retard the reservoir pressure's natural decline.

(10) "Produced water" means those waters produced in conjunction with the production of oil or gas and commonly collected at field storage, processing or disposal facilities including lease tanks, commingled tank batteries, burn pits, lease ACT units and community or lease salt water disposal systems and that may be collected at gas processing plants, pipeline drips and other processing or transportation facilities.

(11) "Producer" means the owner of a well or wells capable of producing oil or gas or both in paying quantities.

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

(**13)** "Proration day" consists of 24 consecutive hours that begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

(14) "Proration month" means the calendar month that begins at 7:00 a.m. on the first day of the month and ends at 7:00 a.m. on the first day of the next succeeding month.

(15) "Proration period" means for oil the proration month and for gas the 12-month period that begins at 7:00 a.m. on

January 1 of each year and ends at 7:00 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

(16) "Proration schedule" means the division orders authorizing the production, purchase and transportation of oil, casinghead gas and gas from the various units of oil or of gas in allocated pools.

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

(18) "Prospective spacing unit" means a hypothetical spacing unit that does not yet have a producing well.

(19) "PVC" means poly vinyl chloride.

(20) "Psi" means pounds per square inch.

Q. [RESERVED]

R. Definitions beginning with the letter "R".

(1) "RCRA" means the federal Resource Recovery and Conservation Act.

(2) "Recomplete" means the subsequent completion of a well in a different pool from the pool in which it was originally completed.

(3) "Regulated NORM" means NORM contained in oil-field soils, equipment, sludges or other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.

(4) "Release" means breaks, leaks, spills, releases, fires or blowouts involving oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and gases to the environment.

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

(6) "Responsible person" means the owner or operator who shall complete a division-approved corrective action for pollution from releases.

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

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

S. Definitions beginning with the letter "S".

(1) "SAR" means the sodium adsorption ratio.

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

(3) "Sediment oil" means tank bottoms and other accumulations of liquid hydrocarbons on an oil and gas lease, which hydrocarbons are not merchantable through normal channels.

(4) "Shallow pool" means a pool that has a depth range from zero to 5000 feet.

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

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

(7) "Significant modification of an abatement plan" means a change in the abatement technology used excluding design and operational parameters, or relocation of 25 percent or more of the compliance sampling stations, for a single medium, as designated pursuant to Subparagraph (d) of Paragraph (2) of Subsection D of 19.15.30.13 NMAC.

(8) "Soil" means earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and that may or may not contain organic matter.

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

(10) "Subsurface water" means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or that vegetation may use.

(11) "Surface waste management facility" means a facility that receives oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage except:

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

(b) a facility permitted pursuant to the New Mexico environmental improvement board rules or WQCC rules;

(c) a temporary pit as defined in 19.15.17 NMAC;

(d) a below-grade tank or pit that receives oil field waste from a single well, permitted pursuant to 19.15.37 NMAC, regardless of the capacity or volume of oil field waste received;

(e) a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated on-site from normal operations, if the facility does not pose a threat to fresh water, public health, safety or the environment;

(f) a remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.30 NMAC, a corrective action pursuant to 19.15.29 NMAC or a corrective action of a non-reportable release;

(g) a facility operating pursuant to a division emergency order;

(h) a site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment or as the division has specifically directed or approved; or

(i) a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid water per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to 19.15.17 NMAC.

T. Definitions beginning with the letter "T".

(1) "Tank bottoms" means that accumulation of hydrocarbon material and other substances that settles naturally below oil in tanks and receptacles that are used in oil's handling and storing, and which accumulation contains in excess of two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.

(2) "TDS" means total dissolved solids.

(3) "Temporary abandonment" means the status of a well that is inactive.

(4) "Top proration unit allowable for gas" means the maximum number of cubic feet of gas, for the proration period, the division allocates to a gas producing unit in an allocated gas pool.

(5) "Top proration unit allowable for oil" means the maximum number of barrels for oil daily for each calendar month the division allocates on a proration unit basis

in a pool to non-marginal units. The division shall determine the top proration unit allowable for a pool by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

(6) "TPH" means total petroleum hydrocarbons.

(7) "Treating plant" means a plant constructed for the purpose of wholly or partially or being used wholly or partially for reclaiming, treating, processing or in any manner making tank bottoms or other waste oil marketable.

(8) "Tribal lands" means those lands for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe. This includes reservations, pueblo land grants, tribal trust lands and individual trust allotments.

(9) "Tribal leases" means those leases of minerals or interests in or rights to minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

(10) "Tribal minerals" means those minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

(11) "Tubingless completion" means a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

(12) "Tubingless multiple completion" means completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common wellbore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of supply completely segregated by cement.

U. Definitions beginning with the letter "U".

(1) "Underground source of drinking water" means an aquifer that supplies water for human consumption or that contains ground water having a TDS concentration of 10,000 mg/l or less and that is not an exempted aquifer.

(2) "Underproduction" means the amount of oil or the amount of gas during a proration period by which a given proration unit failed to produce an amount equal to that the division authorizes in the proration schedule.

(3) "Unit of proration for gas" consists of such multiples of 40 acres as may be prescribed by division-issued special pool orders.

(4) "Unit of proration for oil" consists of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by division-issued special pool orders.

(5) "Unorthodox well location" means a location that does not conform to the spacing requirements division rules establish.

(6) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of a division-approved facility's structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and karst terrain areas where karst topography is developed as a result of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of karst terrain include sinkholes, sinking streams, caves, large springs and blind valleys.

(7) "Upstream facility" means a facility or operation associated with the exploration, development, production or storage of oil or gas that is not a downstream facility.

V. Definitions beginning with the letter "V". "Vadose zone" means unsaturated earth material below the land surface and above ground water, or in between bodies of ground water.

W. Definitions beginning with the letter "W".

(1) "Waste", in addition to its ordinary meaning, includes:

(a) underground waste as those words are generally understood in the oil and gas business, and to embrace the inefficient, excessive or improper use or dissipation of the reservoir energy, including gas energy and water drive, of a pool, and the locating, spacing, drilling, equipping, operating or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recovered from a pool, and the use of inefficient underground storage of gas;

(b) surface waste as those words are generally understood in the oil and gas business, and to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas of any type or in any form, or oil, or a product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of oil or gas, in excess of the reasonable market demand;

(c) oil production in this state in excess of the reasonable market demand for the oil; the excess production causes or results in waste that the Oil and Gas Act prohibits; reasonable market demand as used herein with respect to oil means the demand for the oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of oil or the products thereof, or both the oil and products;

(d) the non-ratable purchase or taking of oil in this state; the non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b) and (c) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC and causes waste by violating the Oil and Gas Act, NMSA 1978, Section 70-2-16;

(e) the production in this state of gas from a gas well or wells, or from a gas pool, in excess of the reasonable market demand from such source for gas of the type produced or in excess of the capacity of gas transportation facilities for such type of gas; the words "reasonable market demand", as used herein with respect to gas, shall be construed to mean the demand for gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of gas or products thereof, or both the gas and products.

(2) "Water" means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(3) "Water contaminant" means a substance that could alter if released or spilled water's physical, chemical, biological or radiological qualities. Water contaminant does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(4) "Watercourse" means a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

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

(6) "Well blowout" means a loss of control over and subsequent eruption of a drilling or workover well or the rupture of the casing, casinghead or wellhead of an oil or gas well or injection or disposal well, whether active or inactive, accompanied by

the sudden emission of fluids, gaseous or liquid, from the well.

(7) "Well bore" means the interior surface of a cased or open hole through which drilling, production or injection operations are conducted.

(8) "Wellhead protection area" means the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas does not include areas around water wells drilled after an existing oil or gas waste storage, treatment or disposal site was established.

(9) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. This definition does not include constructed wetlands used for wastewater treatment purposes.

(10) "Working interest owner" means the owner of an operating interest under an oil and gas lease who has the exclusive right to exploit the oil and gas minerals. Working interests are cost bearing.

(11) "WQCC" means the New Mexico water quality control commission.

[19.15.2.7 NMAC- Rp, 19.15.1.7 NMAC, 12/1/08]

19.15.2.8 GENERAL OPERATIONS/WASTE PROHIBITED:

A. The production or handling of oil or gas of any type or in any form or the handling of oil or gas products in a manner, under conditions or in an amount as to constitute or result in waste is prohibited.

B. Operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, treating plant operators or other persons shall conduct their operations in or related to the drilling, equipping, operating, producing, plugging and abandonment of oil, gas, injection, disposal and storage wells or other facilities in a manner that prevents waste of oil and gas, the contamination of fresh waters and shall not wastefully utilize oil or gas or allow either to leak or escape from a natural reservoir or from wells, tanks, containers, pipe or other storage, conduit or operating equipment.

[19.15.2.8 NMAC - Rp, 19.15.1.13 NMAC, 12/1/08]

19.15.2.9 ORDERS: The division or commission may issue orders, including division or commission special pool orders when required and the orders shall prevail against rules if in conflict with them.

[19.15.2.9 NMAC - Rp, 19.15.1.11 NMAC, 12/1/08]

19.15.2.10 GENERAL WAIVERS AND EXCEPTIONS: [RESERVED]

19.15.2.11 EMERGENCY ORDERS AND RULES:

A. Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, in the event the division or commission finds an emergency exists that requires an order's or rule's issuance without a hearing, the emergency rule or order shall have the same validity as if the division or commission held a hearing before the division or commission after due notice. The emergency rule or order shall remain in force no longer than 15 days from its effective date.

B. Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, if the division or commission finds an emergency exists, the division or commission may conduct a hearing on an application within less than 30 days after party files an application and the director may set the notice period at the director's discretion.

[19.15.2.11 NMAC - Rp, 19.15.14.1225 NMAC, 12/1/08]

19.15.2.12 NUMBERING OF DIVISION ORDERS:

A. Division orders entered after January 1, 1950, pertaining to the allocation of production of oil and gas shall be prefixed with the letter "A" or "AG" in the case of gas pools and shall be numbered consecutively, commencing with the number one, *i.e.*, the first allocation order issued after January 1, 1950, is No. A-1, the next A-2, etc. or AG-1 and AG-2.

B. Other division orders entered after January 1, 1950, shall be prefixed with the letter "R" and shall be numbered consecutively, commencing with the number 1, *i.e*., the first such order issued after January 1, 1950, is No. R-1, the next R-2, etc.

[19.15.2.12 NMAC - Rp, 19.15.15.1304 NMAC, 12/1/08]

19.15.2.13 COMPUTATION OF TIME: In computing a period of time 19.15.2 NMAC through 19.15.39 NMAC prescribes, the day from which the period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which state agencies observe a legal holiday. In such case, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

[19.15.2.13 NMAC - Rp, 19.15.14.1226 NMAC, 12/1/08]

19.15.2.14 MEETINGS BY TELECONFERENCE: Pursuant to NMSA 1978, Section 10-15-1 commission members may participate in commission meetings and hearings by conference telephone or other similar communications equipment when it is otherwise difficult or impossible for members to attend the meeting or hearing in person. Each member participating by conference telephone or other similar communications equipment shall be identified when speaking. Participants shall be able to hear each other at the same time. Members of the public hearing attending the meetings or hearing shall be able to hear commission members who speak during the meeting or hearing.

[19.15.2.14 NMAC - Rp, 19.15.1.20 NMAC, 12/1/08]

19.15.2.15 AUTHORITY TO COOPERATE WITH OTHER AGENCIES: The division may from time to time enter into arrangements with state and federal governmental agencies, industry committees and individuals with respect to special projects, services and studies relating to oil and gas conservation and the associated protection of fresh waters.

[19.15.2.15 NMAC - Rp, 19.15.1.17 NMAC, 12/1/08]

19.15.2.16 DUTIES AND AUTHORITY OF FIELD PERSONNEL: Oil and gas inspectors, deputy oil and gas inspectors, scouts, engineers and geologists the division duly appoints have the authority and duty to enforce division rules. Oil and gas inspectors and their deputies may allow minor deviations from 19.15.2 NMAC through 19.15.39 NMAC's requirements as to field practices where, by so doing, waste is prevented or burdensome delay or expense on the part of the operator is avoided.

[19.15.2.16 NMAC - Rp, 19.15.15.1303, 12/1/08]

19.15.2.17 DISTRICT OFFICES:

A. To expedite administration of the division's work and its rules' enforcement, the state is divided into four districts as follows:

(1) district 1 consisting of Lea, Roosevelt and Curry counties and that portion of Chaves county lying east of the north-south line dividing ranges 29 and 30 east, NMPM with the district office in Hobbs;

(2) district 2 consisting of Eddy,

Otero, Dona Ana, Luna, Hidalgo, Grant, Sierra, Lincoln and De Baca counties and that portion of Chaves county lying west of the north-south line dividing ranges 29 and 30 east, NMPM with the district office in Artesia;

(3) district 3 consisting of San Juan, Rio Arriba, McKinley and Sandoval counties with the district office in Aztec; and

(4) district 4 consisting of the remainder of state with the district office in Santa Fe.

B. Each district office shall be under the charge of a district supervisor, an oil and gas inspector or a deputy oil and gas inspector, unless otherwise specifically required.

C. The district office of the district in which the affected land is located shall take care of matters pertaining to the division.

[19.15.2.17 NMAC - Rp, 19.15.15.1301 NMAC, 12/1/08]

19.15.2.18 RENUMBERING OR REORGANIZATION OF RULES: When the commission approves reorganization or renumbering of division rules, either through amendment or repeal and replacement, persons with permits, orders or agreements that reference rules that have been reorganized or renumbered shall comply with the rules as reorganized or renumbered.

[19.15.2.18 NMAC - N, 12/1/08]

HISTORY of 19.15.2 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions (filed 04/27/2001); 19.15.14 NMAC, Procedure (filed 09/16/2005); and 19.15.15 NMAC, Administration (filed 07/12/2004) all repealed 12/1/08.

NMAC History:

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 1-7, 11, 13, 17, & 20) (filed 04/27/2001); 19.15.14 NMAC, Procedure (Sections 1225 and 1226) (filed 09/16/2005); and 19.15.15 NMAC, Administration (Sections 1301 and 1303) (filed 07/12/2004) were replaced by 19.15.2 NMAC, General Provisions for Oil and Gas Operations, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 3 RULEMAKING

19.15.3.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.3.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/08]

19.15.3.2 SCOPE: 19.15.3 NMAC applies to persons or entities engaged in rulemaking proceedings before the commission.

[19.15.3.2 NMAC - Rp, 19.15.14.2 NMAC, 12/1/08]

19.15.3.3 STATUTORY AUTHORITY: 19.15.3 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, which grants the oil conservation division and the oil conservation commission jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and NMSA 1978, Section 70-2-7, which provides that the division shall prescribe by rule its hearing procedures.

[19.15.3.3 NMAC - Rp, 19.15.14.3 NMAC, 12/1/08]

19.15.3.4 DURATION: Permanent.

[19.15.3.4 NMAC - Rp, 19.15.14.4 NMAC, 12/1/08]

19.15.3.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.

[19.15.3.5 NMAC - Rp, 19.15.14.5 NMAC, 12/1/08]

19.15.3.6 OBJECTIVE: To establish procedures for commission rulemaking proceedings.

[19.15.3.6 NMAC - Rp, 19.15.14.6 NMAC, 12/1/08]

19.15.3.7 DEFINITIONS: [RESERVED]

[See 19.15.2.7 NMAC for definitions.]

[19.15.3.7 NMAC - N, 12/1/08]

19.15.3.8 RULEMAKING INITIATION:

A. The commission may commence a rulemaking proceeding by issuing an order initiating rulemaking. The division, an operator or producer or other person may initiate a rulemaking proceeding by filing an application to adopt, amend or repeal a rule with the commission clerk. The application shall be in writing and applicants shall specifically identify the rule the applicant seeks for the commission to adopt, amend or repeal. The application or order initiating rulemaking shall include the following:

(1) a brief summary of the proposed rule change's intended effect;

(2) a proposed draft of the new rule or amendment;

(3) the applicant's name;

(4) the applicant's address, or the address of its attorney, including an e-mail address and fax number if available;

(5) a proposed legal notice for publication; and

(6) any other matter a commission order requires.

B. An applicant shall file six sets of the application for rulemaking with the commission clerk. The applicant shall file the application by delivering the application to the commission clerk in person, by mail or by facsimile, as long as the applicant mails or delivers six sets of the application to the commission clerk on the next business day.

C. Upon receiving an application for rule change the commission clerk shall file the application, and shall deliver a copy to all commissioners within 10 business days of the application's receipt. Unless the commission chairman or another commissioner indicates, within 10 business days following the commission clerk's delivery of the rule change application, that a hearing is not necessary or appropriate, the chairman shall schedule a hearing on the rule change application. If a commissioner indicates to the chairman, or if the chairman concludes, that a hearing is not necessary or appropriate because the application is repetitive or frivolous or for any other lawful reason, the commission shall determine within 60 days of the application's filing whether to hear the application, and if the commission decides to hear the application, the chairman shall schedule a hearing on the rule change application.

D. 19.15.3.8 NMAC shall not apply to special pool orders, which the commission or the division may adopt, amend or rescind in adjudicatory proceedings subject to 19.15.4.9 NMAC and 19.15.4.12 NMAC's notice provisions.

[19.15.3.8 NMAC - Rp, 19.15.14.1201 NMAC, 12/1/08]

19.15.3.9 RULEMAKING NOTICE:

A. The division shall publish notice of a proposed rulemaking set for the hearing in the name of the "State of New Mexico", signed by the commission chairman and bearing the commission's seal. The notice shall state the hearing's date, time and place and the date by which those commenting shall submit their written comments to the commission clerk. The notice shall be published as follows:

(1) one time in a newspaper of general circulation in the counties that the proposed rule change affects, or if the proposed rule change will have statewide effect, in a newspaper of general circulation in the state, no less than 20 days prior to the scheduled hearing date;

(2) on the applicable docket for the commission hearing at which the commission will hear the matter, which the commission clerk shall send by regular or electronic mail not less than 20 days prior to the hearing to all who have requested such notice;

(3) one time in the New Mexico register, with the publication date not less than 10 business days prior to the scheduled hearing date; and

(4) by posting on the division's website not less than 20 days prior to the scheduled hearing date.

B. In cases of emergency, the commission chairman may shorten these time limits by written order.

[19.15.3.9 NMAC - Rp, 19.15.14.1202, 12/1/08]

19.15.3.10 COMMENTS ON RULEMAKING: A person may submit written, electronic or facsimile comments on a proposed rule change, and those comments shall be made part of the hearing record. Individuals or entities shall provide written comments on the proposed rule change to the commission clerk not later than five business days before the scheduled hearing date, unless the commission chairman or the commission extends the time for filing comments. The commission chairman or the commission may extend the time for filing written, electronic or facsimile comments by making an announcement at the hearing, or by posting notice on the division's website. A person may review written, electronic or facsimile comments on a proposed rule change at the division's Santa Fe office. The division shall post copies of written, electronic or facsimile comments that persons have filed with the commission clerk on the division's website as soon as practicable after they are filed.

[19.15.3.10 NMAC - Rp, 19.15.14.1203 NMAC, 12/1/08]

19.15.3.11 RULEMAKING HEARING PARTICIPATION:

A. Non-technical testimony.

(1) A person may testify or make an un-sworn statement at the rulemaking hearing. A person does not need to file prior notification with the commission clerk to present non-technical testimony at the hearing.

(2) A person may also offer exhibits in connection with the testimony, so long as the exhibits are relevant to the proposed rule change and do not unduly repeat the testimony. A person offering exhibits shall file exhibits prior to the scheduled hearing date or submit them at the hearing.

(3) Members of the general public who wish to present non-technical testimony should indicate their intent on a sign-in sheet at the hearing.

B. Technical testimony.

(1) A person, including the division, who intends to present technical testimony or cross-examine witnesses at the hearing shall, no later than five business days before the scheduled hearing date, file six sets of a pre-hearing statement with the commission clerk. Corporations, partnerships, governmental agencies, political subdivisions, unincorporated associations and other collective entities shall appear only through an attorney or through a duly authorized officer or member.

(2) The pre-hearing statement shall include the person or entity's name and its attorney's name; the names of all witnesses the person or entity 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 the person or entity will need to present its testimony. The person or entity shall attach to the pre-hearing statement any exhibits it plans to offer as evidence at the hearing. A corporation or other entity not represented by an attorney shall identify in its pre-hearing statement the person who will conduct its presentation and shall attach a sworn and notarized statement from the corporation's or entity's governing body or chief executive officer attesting that it authorizes that person to represent the corporation or entity.

(3) The commission may exclude any expert witnesses or technical exhibits not identified in or attached to the pre-hearing statement unless the testimony or exhibit is offered solely for rebuttal or the person or entity offering the testimony or exhibits demonstrates good cause for omitting the witness or exhibit from its pre-hearing statement.

(4) The division shall post copies of pre-hearing statements filed with the commission clerk on the division's website as soon as practicable after they are filed. A person may review pre-hearing statements filed with the commission clerk at the division's Santa Fe office.

C. Modifications to proposed rule changes.

(1) A person, other than the applicant or a commissioner, recommending modifications to a proposed rule change shall, no later than 10 business days prior to the scheduled hearing date, file a notice of recommended modifications with the commission clerk.

(2) The notice shall include:

(a) the text of the recommended modifications to the proposed rule change;

(b) an explanation of the recommended modification's impact; and

(c) reasons for adopting the modification.

[19.15.3.11 NMAC - Rp, 19.15.14.1204 NMAC, 12/1/08]

19.15.3.12 RULEMAKING HEARINGS:

A. Conduct of hearings.

(1) The rules of civil procedure and the rules of evidence shall not apply.

(2) The commission shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome and without unnecessary repetition. The hearing shall proceed as follows:

(a) the hearing shall begin with a statement from the commission chairman identifying the hearing's nature and subject matter and explaining the procedures to be followed;

(b) the commission may allow persons to make a brief opening statement;

(c) unless otherwise ordered, the applicant, or in the case of commission initiated rulemaking, commission or division staff, shall present its case first;

(d) the commission chairman shall establish an order for other participants' testimony based upon notices of intent to present technical testimony, sign-in sheets, the availability of witnesses who cannot be present for the entire hearing and any other appropriate factor;

(e) the commission may allow persons to make a brief closing statement;

(f) if the hearing continues for more than one day, the commission shall provide an opportunity each day for public comment;

(g) at the close of the hearing, the commission shall determine whether to keep the record open for written submittals including arguments and proposed statements of reasons supporting the proposed commission decision; in considering whether the record will remain open, the

commission shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision; if the commission keeps the record open, the commission chairman shall announce at the hearing's conclusion the subjects on which the commission will allow submittals and the deadline for filing the submittals; and

(h) if the hearing is not completed on the day that it commences, the commission may, by announcement, continue the hearing as necessary without further notice.

B. Testimony and cross-examination.

(1) The commission shall take all testimony under oath or affirmation, which may be accomplished en masse or individually. However, a person may make an unsworn position statement.

(2) The commission shall admit relevant evidence, unless the commission determines that the evidence is incompetent or unduly repetitious.

(3) A person who testifies at the hearing is subject to cross-examination by a person who has filed a pre-hearing statement on the subject matter of the person's direct testimony. A person who presents technical testimony may also be cross-examined on matters related to the person's background and qualifications. The commission may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

C. Exhibits.

(1) A person offering an exhibit shall provide six sets of the exhibit for the commission, copies for each of those individuals or entities that have filed an intent to present technical testimony or cross-examine witnesses at the hearing and five additional copies for others who may attend the hearing.

(2) Exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially.

D. Transcript of proceeding.

(1) The commission shall make a verbatim record of the hearing.

(2) A person may obtain a copy of the hearing transcript. The person requesting the copy shall pay for the cost of the copy of the hearing transcript.

E. Deliberation and decision.

(1) If a quorum of the commission attended the hearing, and if the hearing agenda indicates that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and make a decision in open session on the proposed rule change based on a motion that includes reasons for the decision.

(2) If, during the course of deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.3.9 NMAC.

(3) The commission shall issue a written order adopting or refusing to adopt the proposed rule change, or adopting the proposed rule change in part, and shall include in the order the reasons for the action taken.

(4) Upon the commission's issuance of the order, the commission clerk shall post the order on the division's website and mail or e-mail a copy of the order to each person who presented non-technical testimony at the hearing or who filed a pre-hearing statement, or the person's attorney.

F. Filing. The division shall file with the state records center and archives and publish any rule the commission adopts, amends or repeals consistent with the State Rules Act.

[19.15.3.12 NMAC - Rp, 19.15.14.1205 NMAC, 12/1/08]

HISTORY of 19.15.3 NMAC:

History of Repealed Material: 19.15.14 NMAC, Procedure (filed 09/16/2005) repealed 12/1/08.

NMAC History:

Those applicable portions of 19.15.14 NMAC, Procedure (Sections 1-6, 1201 - 1205) (filed 09/16/2005) were replaced by 19.15.3 NMAC, Rulemaking, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 4 ADJUDICATION

19.15.4.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.4.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/08]

19.15.4.2 SCOPE: 19.15.4 NMAC applies to persons engaged in adjudicatory proceedings before the division or the commission.

[19.15.4.2 NMAC -Rp, 19.15.14.2 NMAC, 12/1/08]

19.15.4.3 STATUTORY AUTHORITY: 19.15.4 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, which grants the oil conservation division and the oil conservation commission jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and NMSA 1978, Section 70-2-7, which provides that the division shall prescribe by rule its hearing procedures.

[19.15.4.3 NMAC - Rp, 19.15.14.3 NMAC, 12/1/08]

19.15.4.4 DURATION: Permanent.

[19.15.4.4 NMAC - Rp, 19.15.14.4 NMAC, 12/1/08]

19.15.4.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.

[19.15.4.5 NMAC - Rp, 19.15.14.5 NMAC, 12/1/08]

19.15.4.6 OBJECTIVE: To establish procedures for adjudicatory hearings before the division or commission.

[19.15.4.6 NMAC - Rp, 19.15.14.6 NMAC, 12/1/08]

19.15.4.7 DEFINITIONS: [RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.4.8 INITIATING AN ADJUDICATORY HEARING:

A. The division, attorney general, an operator or producer or other person with standing may file an application with the division for an adjudicatory hearing. The director, upon receiving a division examiner's recommendation, may dismiss an application for an adjudicatory proceeding upon a showing that the applicant does not have standing. The person applying for the hearing or an attorney representing that person shall sign the application requesting an adjudicatory hearing. The application shall include:

(1) the applicant's name;

(2) the applicant's address, or the address of the applicant's attorney, including an e-mail address and fax number if available;

(3) the name or general description of the common source or sources of supply or the area the order sought affects;

(4) briefly, the general nature of the order sought;

(5) a proposed legal notice for publication; and

(6) any other matter division rules or a division order requires.

B. Applicants for adjudicatory hearings shall file written applications with the division clerk at least 30 days before the application's scheduled hearing date.

[19.15.4.8 NMAC - Rp, 19.15.14.1206 NMAC, 12/1/08]

19.15.4.9 ADJUDICATORY HEARING NOTICE:

A. The division shall publish notice of an adjudicatory hearing in the name of the "State of New Mexico", signed by the director and bearing the commission's seal, stating:

(1) the adjudicatory hearing's time and place;

(2) whether the case is set for hearing before the commission or a division examiner;

(3) the applicant's name and address, or address of the applicant's attorney, including an e-mail address and fax number if available;

(4) a case name and number;

(5) a brief description of the hearing's purpose;

(6) a reasonable identification of the adjudication's subject matter that alerts persons who may be affected if the division grants the application;

(7) if the application seeks to adopt, revoke or amend special pool orders; establish or alter a non-standard unit; permit an unorthodox location or establish or affect a well's or proration unit's allowable, the notice shall specify each pool or common source of supply that the division or commission's granting the application may affect; and

(8) if the application seeks compulsory pooling or statutory unitization, the notice shall contain a legal description of the spacing unit or geographical area the applicant seeks to pool or unitize.

B. The division shall publish notice of each adjudicatory hearing before the commission or a division examiner at least 20 days before the hearing by:

(1) posting notice on the division's website;

(2) delivering notice by ordinary first class United States mail or electronic mail to each person who has requested in writing to be notified of such hearings; and

(3) if before the commission, publishing notice in a newspaper of general circulation in the counties the application affects, or if the application's effect will be statewide, in a newspaper of general circulation in the state.

[19.15.4.9 NMAC - Rp, 19.15.14.1207 NMAC, 12/1/08]

19.15.4.10 PARTIES TO ADJUDICATORY PROCEEDINGS:

A. The parties to an adjudicatory proceeding shall include:

(1) the applicant;

(2) a person to whom statute, rule or order requires notice (not including those persons to whom 19.15.4.9 NMAC requires distribution of hearing notices, who are not otherwise entitled to notice of the particular application), who has entered an appearance in the case; and

(3) a person who properly intervenes in the case.

B. A person entitled to notice may enter an appearance at any time by filing a written notice of appearance with the division or the commission clerk, as applicable, or, subject to the provisions in Subsection C of 19.15.4.10 NMAC, by oral appearance on the record at the hearing.

C. A party who has not entered an appearance at least one business day prior to the pre-hearing statement filing date provided in Paragraph (1) of Subsection B of 19.15.4.13 NMAC shall not be allowed to present technical evidence at the hearing unless the commission chairman or the division examiner, for good cause, otherwise directs.

D. A party shall be entitled to a continuance of any hearing if it did not receive notice of the hearing at least three business days prior to the date for filing a timely appearance as 19.15.4 NMAC provides.

[19.15.4.10 NMAC - Rp, 19.15.14.1208 NMAC, 12/1/08]

19.15.4.11 ADJUDICATORY PROCEEDING INTERVENTION:

A. A person with standing with respect to the case's subject matter may intervene by filing a written notice of intervention with the division or commission clerk, as applicable, at least one business day before the date for filing a pre-hearing statement. Notice of intervention shall include:

(1) the intervenor's name;

(2) the intervenor's address, or the address of the intervenor's attorney, including an e-mail address and fax number if available;

(3) the nature of intervenor's interest in the application; and

(4) the extent to which the intervenor opposes issuance of the order applicant seeks.

B. The division examiner or commission chairman may, at their discretion, allow late intervenors to participate if the intervenor files a written notice on or after the date provided in Subsection A of 19.15.4.8 NMAC, or by oral appearance on the record at the hearing.

C. The division examiner or the commission chairman may strike a notice of intervention on a party's motion if the intervenor fails to show that the intervenor has standing, unless the intervenor shows that intervenor's participation will contribute substantially to the prevention of waste, protection of correlative rights or protection of public health or the environment.

[19.15.4.11 NMAC - Rp, 19.15.14.1209 NMAC, 12/1/08]

19.15.4.12 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:

A. Applicants for the following adjudicatory hearings before the division or commission shall give notice, in addition to that 19.15.4.9 NMAC requires, as follows.

(1) Compulsory pooling and statutory unitization.

(a) The applicant shall give notice to an owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled or unitized whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause).

(b) When the applicant has given notice as required in Subsection A of 19.15.4.9 NMAC, of a compulsory pooling application, the proposed unit is not larger in size than provided in 19.15.15 NMAC or applicable special pool orders, and those owners the applicant has located do not oppose the application, the applicant may file under the following alternative procedure. The application shall include the following:

(i) a statement that the applicant expects no opposition including the reasons why;

(ii) a map outlining the spacing unit to be pooled, showing the ownership of each separate tract in the proposed unit and the proposed well's location;

(iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that the applicant has conducted a diligent search of all public records in the county where the well is located and of phone directories, including computer searches;

(iv) the names of the formations and pools to be pooled;

(v) a statement as to whether the pooled unit is for gas or oil production or both;

(vi) written evidence of attempts the applicant made to gain volun-

tary agreement including but not limited to copies of relevant correspondence;

(vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;

(viii) the location and proposed depth of the well to be drilled on the pooled units; and

(ix) a copy of the AFE the applicant, if appointed operator, will submit to the well's interest owners.

(c) Applicants shall provide with all submittals sworn and notarized statements by those persons who prepared submittals, attesting that the information is correct and complete to the best of their knowledge and belief.

(d) The division shall set unopposed pooling applications for hearing. If the division finds the application complete, the information submitted with the application shall constitute the record in the case, and the division shall issue an order based on the record.

(e) At an interested person's request or upon the division's own initiative, the division shall set a pooling application for full hearing with oral testimony by the applicant.

(2) Unorthodox well locations.

(a) Affected persons are the following persons owning interests in the adjoining spacing units:

(i) the division-designated operator;

(ii) in the absence of an operator, a lessee whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date he files the application; and

(iii) in the absence of an operator or lessee, a mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application.

(b) In the event the proposed unorthodox well's operator is also the operator of an existing, adjoining spacing unit, and ownership is not common between the adjoining spacing unit and the spacing unit containing the proposed unorthodox well, then affected persons include working interest owners in that spacing unit.

(c) If the proposed location is unorthodox by being located closer to the spacing unit's outer boundary than 19.15.15 NMAC or applicable special pool orders permit, the applicant shall notify the affected persons in the adjoining spacing units towards which the unorthodox location encroaches.

(d) If the proposed location is unorthodox by being located in a different quarter-quarter section or quarter section than special pool orders provide, the applicant shall notify affected persons.

(3) Non-standard proration unit. The applicant shall notify owners of interest in the mineral estate to be excluded from the proration unit in the quarter-quarter section for 40-acre pools or formations, the one-half quarter section for 80-acre pools or formations, the quarter section for 160-acre pools for formations, the half section for 320-acre pools or formations or section for 640-acre pools or formations in which the non-standard unit is located and to such other persons as the division requires.

(4) Special pool orders regulating or affecting a specific pool.

(a) Except for non-standard proration unit applications, if the application involves changing the amount of acreage to be dedicated to a well, the applicant shall notify:

(i) division-designated operators in the pool; and

(ii) owners of interests in the mineral estate in existing spacing units with producing wells.

(b) If the application involves other matters, the applicant shall notify:

(i) division-designated operators in the pool; and

(ii) division-designated operators of wells within the same formation as the pool and within one mile of the pool's outer boundary that have not been assigned to another pool.

(5) Special orders regarding any division-designated potash area. The applicant shall notify potash lessees, oil and gas operators, oil and gas lessees and unleased mineral interest owners within the designated potash area.

(6) Downhole commingling. The applicant shall notify owners of interests in the mineral estate in the spacing unit if ownership is not common for commingled zones within the spacing unit.

(7) Surface disposal of produced water or other fluids. The applicant shall notify surface owners within one-half mile of the site.

(8) Surface commingling. The applicant shall give notice as Subsection C of 19.15.12.10 NMAC prescribes.

(9) Adjudications not listed above. The applicant shall give notice as the division requires.

B. Type and content of notice. The applicant shall send a notice 19.15.4.9 NMAC requires by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the application's scheduled hearing date and shall include a copy of the application; the hearing's date, time and place; and the means by which protests may be made. When an applicant has been unable to locate persons entitled to notice after exercising reasonable diligence, the applicant shall provide notice by publication, and submit proof of publication at the hearing. Such proof shall consist of a copy of a legal advertisement that was published at least 10 business days before the hearing in a newspaper of general circulation in the county or counties in which the property is located, or if the application's effect is statewide, in a newspaper of general circulation in this state, together with the newspaper's affidavit of publication.

C. At the hearing, the applicant shall make a record, either by testimony or affidavit, that the applicant or its authorized representative has signed, that the applicant has:

(1) complied with notice provisions of 19.15.4.9 NMAC;

(2) conducted a good-faith diligent effort to find the correct addresses of persons entitled to notice; and

(3) given notice at that correct address as 19.15.4.9 NMAC requires; in addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof.

D. Evidence of failure to provide notice as 19.15.4.9 NMAC requires may, upon proper showing, be considered cause for reopening the case.

E. In the case of an administrative application where the required notice was sent and a timely filed protest was made, the division shall notify the applicant and the protesting party in writing that the case has been set for hearing and the hearing's date, time and place. No further notice is required.

[19.15.4.12 NMAC - Rp, 19.15.14.1210 NMAC, 12/1/08]

19.15.4.13 PLEADINGS, COPIES, PRE-HEARING STATEMENTS, EXHIBITS AND MOTIONS FOR CONTINUANCE:

A. Pleadings. Applicants shall file two sets of pleadings and correspondence in cases pending before a division examiner with the division clerk and six sets of pleadings and correspondence in cases pending before the commission with the commission clerk. For cases pending before the commission, the commission clerk shall disseminate copies of pleadings and correspondence to the commission members. The party filing the pleading or correspondence shall at the same time serve a copy of the pleading or correspondence upon each party who has entered an appearance in the case on or prior to the business day immediately preceding the date when the party files the pleading or correspondence with the division or the commission

clerk, as applicable. Parties shall accomplish service by hand delivery or transmission by facsimile or electronic mail to a party who has entered an appearance or, if the party is represented, the party's attorney of record. Service upon a party who has not filed a pleading containing a facsimile number or e-mail address may be made by ordinary first class mail. Parties shall be deemed to have made an appearance when they have either sent a letter regarding the case to the division or commission clerk or made an in person appearance at a hearing before the commission or before a division examiner. A written appearance, however, shall not be complete until the appearing party has provided notice to other parties of record. An initial pleading or written entry of appearance a party other than the applicant files shall include the party's address or the address of the party's attorney and an e-mail and facsimile number if available.

B. Pre-hearing statements.

(1) A party to an adjudicatory proceeding who intends to present evidence at the hearing shall file a pre-hearing statement, and serve copies on other parties or, for parties that are represented, their attorneys in the manner Subsection A of 19.15.4.13 NMAC provides, at least four business days in advance of a scheduled hearing before the division or the commission, but in no event later than 5:00 p.m. mountain time, on the Thursday preceding the scheduled hearing date. The statement shall include:

(a) the names of the party and the party's attorney;

(b) a concise statement of the case;

(c) the names of witnesses the party will call to testify at the hearing, and in the case of expert witnesses, their fields of expertise;

(d) the approximate time the party will need to present its case; and

(e) identification of any procedural matters that are to be resolved prior to the hearing.

(2) A party other than the applicant shall include in its pre-hearing statement a statement of the extent to which the party supports or opposes the issuance of the order the applicant seeks and the reasons for such support or opposition. In cases to be heard by the commission, each party shall include copies of exhibits that it proposes to offer in evidence at the hearing with the pre-hearing statement. The commission may exclude witnesses the party did not identify in the pre-hearing statement, or exhibits the party did not file and serve with the pre-hearing statement, unless the party offers such evidence solely for rebuttal or makes a satisfactory showing of good cause for failure to disclose the witness or exhibit.

(3) A pre-hearing statement filed by a corporation or other entity not represented by an attorney shall identify the person who will conduct the party's presentation at the hearing and include a sworn and notarized statement attesting that the corporation's or entity's governing body or chief executive officer authorizes the person to present the corporation or entity in the matter.

(4) For cases pending before the commission, the commission clerk shall disseminate copies of pre-hearing statements and exhibits to the commission members.

C. Motions for continuance. Parties shall file and serve motions for continuance no later than 48 hours prior to time the hearing is set to begin, unless the reasons for requesting a continuance arise after the deadline, in which case the party shall file the motion as expeditiously as possible after becoming aware of the need for a continuance.

[19.15.4.13 NMAC - Rp, 19.15.14.1211 NMAC, 12/1/08]

19.15.4.14 CONDUCT OF ADJUDICATORY HEARINGS:

A. Testimony. Hearings before the commission or a division examiner shall be conducted without rigid formality. The division or commission shall take or have someone take a transcript of testimony and preserve the transcript as a part of the division's permanent records. A person testifying shall do so under oath. The division examiner or commission shall designate whether or not an interested party's un-sworn comments and observations are relevant and, if relevant, include the comments and observations in the record.

B. Pre-filed testimony. The director may order the parties to file prepared written testimony in advance of the hearing for cases pending before the commission. The witness shall be present at the hearing and shall adopt, under oath, the prepared written testimony, subject to cross-examination and motions to strike unless the witness' presence at hearing is waived upon notice to other parties and without their objection. The parties shall number pages of the prepared written testimony, which shall contain line numbers on the left-hand side.

C. Appearances pro se or through an attorney. Parties may appear and participate in hearings either pro se (on their own behalf) or through an attorney. Corporations, partnerships, governmental entities, political subdivisions, unincorporated associations and other collective entities may appear only through an attorney or through a duly authorized officer or member. Participation in adjudicatory hearings shall be limited to parties, as defined in 19.15.4.10 NMAC, except that a representative of a federal, state or tribal governmental agency or political subdivision may make a statement on the agency's or political subdivision's behalf. The commission or division examiner shall have the discretion to allow other persons present at the hearing to make a relevant statement, but not to present evidence or cross-examine witnesses. A person making a statement at an adjudicatory hearing shall be subject to cross-examination by the parties or their attorneys.

[19.15.4.14 NMAC - Rp, 19.15.14.1212 NMAC, 12/1/08]

19.15.4.15 CONTINUANCE OF AN ADJUDICATORY HEARING: A division examiner or the commission chair may continue an adjudicatory hearing before a division examiner or the commission held after due notice to a specified time and place without the necessity of notice of the same being served or published.

[19.15.4.15 NMAC - Rp, 19.15.14.1213 NMAC, 12/1/08]

19.15.4.16 POWER TO REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE; PRE-HEARING PROCEDURE FOR ADJUDICATORY HEARINGS:

A. Subpoenas. The commission or its members and the director or the director's authorized representative have statutory power to subpoena witnesses and to require the production of books, papers, records, other tangible things or electronic data in a proceeding before the commission or division. The director or the director's authorized representative shall issue a subpoena for attendance at a hearing upon a party's written request. The director or the director's authorized representative shall, upon a party's request, issue a subpoena for production of books, papers, records, other tangible things or electronic data in advance of the hearing. The director or the division examiner assigned to hear the case may consider pre-hearing motions, such as motions for protection or quashing of subpoenas, prior to the hearing pursuant to Subsection C of 19.15.4.16 NMAC or to reserve such matters for consideration at a hearing on the merits. The commission and director or the director's authorized representative shall issue subpoenas for witness depositions in advance of the hearing only in extraordinary circumstances for good cause shown.

B. Pre-hearing conferences. The division examiner or the director may hold a pre-hearing conference prior to the hearing on the merits in cases pending before the division or the commission,

respectively, either upon a party's request or upon the director or a division examiner giving notice. The pre-hearing conference's purpose shall be to narrow issues, eliminate or resolve other preliminary matters and encourage settlement. The director or examiner may issue a pre-hearing order following the pre-hearing conference. The director or division examiner shall either provide or ensure that written or oral notice of a pre-hearing conference is given to the applicant and to other parties who, at the time such conference is scheduled, have filed appearances in the case.

C. Hearings on motions. The director or a division examiner may rule on motions that are necessary or appropriate for disposition prior to a hearing on the merits. If the case is pending before the commission, the director shall rule on a motion; provided that the director may refer a motion for hearing by a division examiner specifically designated for the purpose, who, if the case is a de novo application, shall not have participated in the case prior to the filing of the application for de novo hearing. Prior to ruling on a motion, the director or division examiner shall give written or oral notice to each party who has filed an appearance in the case and who may have an interest in the motion's disposition (except a party who has indicated that it does not oppose the motion), and shall allow interested parties an opportunity, reasonable under the circumstances, to respond to the motion. The director or division examiner may conduct a hearing on a motion, following written or oral notice to interested parties, either at a pre-hearing conference or otherwise. If the commission or division receives oral testimony at a hearing, the commission or division examiner shall ensure that a record is made of the testimony as at other hearings.

[19.15.4.16 NMAC - Rp, 19.15.14.1214 NMAC, 12/1/08]

19.15.4.17 RULES OF EVIDENCE AND EXHIBITS FOR ADJUDICATORY HEARINGS:

A. Presentation of evidence. Subject to other provisions of 19.15.4.16 NMAC, the commission or division examiner shall afford full opportunity to the parties at an adjudicatory hearing before the commission or division examiner to present evidence and to cross-examine witnesses. The rules of evidence applicable in a trial before a court without a jury shall not control, but division examiners and the commission may use such rules as guidance in conducting adjudicatory hearings. The commission or division examiner may admit relevant evidence, unless it is immaterial, repetitious or otherwise unreliable. The commission or division examiner may take administrative notice of the authenticity of documents copied from the division's files.

B. Parties introducing exhibits at hearings before the commission or a division examiner shall provide a complete set of exhibits for the court reporter, each commissioner or division examiner and other parties of record.

C. A party requesting incorporation of records from a previous hearing at a commission hearing shall include copies of the record for each commissioner.

[19.15.4.17 NMAC - Rp, 19.15.14.1215 NMAC, 12/1/08]

19.15.4.18 DIVISION EXAMINER'S QUALIFICATIONS, APPOINTMENT AND REFERRAL OF CASES: The director shall appoint as division examiners division staff who are licensed attorneys, or who have experience in hydrogeology, hydrology, geology, petroleum engineering, environmental engineering or a related field and a college degree in geology, engineering, hydrology or related field. Nothing in 19.15.4.18 NMAC shall prevent a commission member from serving as a division examiner. The director may refer a matter or proceeding to a division examiner for hearing in accordance with 19.15.4 NMAC.

[19.15.4.18 NMAC - Rp, 19.15.14.1216 NMAC, 12/1/08]

19.15.4.19 DIVISION EXAMINER'S POWER AND AUTHORITY: The division examiner to whom the director refers a matter under 19.15.4 NMAC shall have full authority to hold hearings on such matter in accordance with 19.15.4 NMAC, subject only to such limitations as the director may order in a particular case. The division examiner shall have the power to perform all acts and take all measures necessary and proper for the hearing's efficient and orderly conduct, including administering oaths to witnesses, receiving testimony and exhibits offered in evidence and ruling upon such objections as may be interposed. The division examiner shall cause a complete record of the proceedings to be made and transcribed and shall certify the record of the proceedings to the director as provided in 19.15.4.21 NMAC.

[19.15.4.19 NMAC - Rp, 19.15.14.1217 NMAC, 12/1/08]

19.15.4.20 ADJUDICATORY HEARINGS THAT SHALL BE HELD BEFORE THE COMMISSION: Notwithstanding other provisions of 19.15.4 NMAC, the hearing on a matter shall be held before the commission if:

A. it is a hearing pursuant to NMSA 1978, Section 70-2-13; or

B. the director directs the commission to hear the matter.

[19.15.4.20 NMAC - Rp, 19.15.14.1218 NMAC, 12/1/08]

19.15.4.21 REPORT AND RECOMMENDATIONS FROM DIVISION EXAMINER'S HEARING: Upon conclusion of a hearing before a division examiner, the division examiner shall promptly consider the proceedings in such hearing, and based upon the hearing's record prepare a written report with recommendations for the division's disposition of the matter or proceeding. The division examiner shall draft a proposed order and submit it to the director with the certified record of the hearing.

[19.15.14.1219 NMAC - Rp, 19.15.14.1219 NMAC, 12/1/08]

19.15.4.22 DISPOSITION OF CASES HEARD BY DIVISION EXAMINER: After receipt of the division examiner's report, the director shall enter the division's order, which the director may have modified from the division examiner's proposed order, disposing of the matter.

[19.15.4.22 NMAC - Rp, 19.15.14.1220 NMAC, 12/1/08]

19.15.4.23 HEARING BEFORE COMMISSION AND STAYS OF DIVISION ORDERS:

A. De novo applications. When the division enters an order pursuant to a hearing that a division examiner held, a party of record whom the order adversely affects has the right to have the matter heard de novo before the commission, provided that within 30 days from the date the division issues the order the party files a written application for de novo hearing with the commission clerk. If a party files an application for a de novo hearing, the commission chairman shall set the matter or proceeding for hearing before the commission.

B. Stays of division or commission orders. A party requesting a stay of a division or commission order shall file a motion with the commission clerk and serve copies of the motion upon the other parties who appeared in the case, as Subsection A of 19.15.4.10 NMAC provides. The party shall attach a proposed stay order to the motion. The director may grant a stay pursuant to a motion for stay or upon the director's own initiative, after according parties who have appeared in the case notice and an opportunity to respond, if the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party. A director's order staying a commission order shall be effective only until the commission acts on the motion for stay.

[19.15.4.23 NMAC - Rp, 19.15.14.1221

NMAC, 12/1/08]

19.15.4.24 COPIES OF COMMISSION AND DIVISION ORDERS: Within 10 business days after the division or commission issues an order in an adjudicatory case, including an order granting or refusing rehearing or order following rehearing, the division or commission clerk shall mail a copy of such order to each party or its attorney of record. For purposes of 19.15.4.24 NMAC only, the parties to a case are the applicant and each person who has entered an appearance in the case, in person or by attorney, either by filing a protest, pleading or notice of appearance with the division or commission clerk or by entering an appearance on the record at a hearing.
[19.15.4.24 NMAC - Rp, 19.15.14.1222 NMAC, 12/1/08]

19.15.4.25 REHEARINGS: Within 20 days after entry of a commission order a party of record whom the order adversely affects may file with the commission clerk an application for rehearing on a matter the order determined, setting forth the respect in which the party believes the order is erroneous. The commission shall grant or refuse the application in whole or in part within 10 business days after the party files it, and the commission's failure to act on the application within such period shall be deemed a refusal and a final disposition of such application. In the event the commission grants the rehearing, the commission may enter a new order after rehearing as the circumstances may require.
[19.15.14.25 NMAC - Rp, 19.15.14.1223 NMAC, 12/1/08]

19.15.4.26 EX PARTE COMMUNICATIONS:

A. In an adjudicatory proceeding, except for filed pleadings, at no time after a party files an application for hearing shall a party, interested participant or participant's representative advocate a position with respect to the issues the application involves to a commissioner or the division examiner appointed to hear the case unless the other parties of record to the proceedings have an opportunity to be present.

B. The prohibition in Subsection A of 19.15.4.26 NMAC, above, does not apply to those applications that the applicant believes are unopposed. However, in the event that a party files an objection in a case previously believed to be unopposed, the prohibition in Subsection A of 19.15.4.26 NMAC, above, is immediately applicable.

C. This provision does not prohibit communications between the division's attorney or other division staff and the director that are essential to a case's management.
[19.15.4.26 NMAC - Rp, 19.15.14.1224 NMAC, 12/1/08]

HISTORY of 19.15.4 NMAC:

History of Repealed Material: 19.15.14 NMAC, Procedure (filed 09/16/2005) repealed 12/1/08.

NMAC History:
Those applicable portions of 19.15.14 NMAC, Procedure (Sections 1-6, 1206 - 1224) (filed 09/16/2005) were replaced by 19.15.4 NMAC, Adjudication, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 5 ENFORCEMENT AND COMPLIANCE

19.15.5.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.5.1 NMAC - N, 12/1/08]

19.15.5.2 SCOPE: 19.15.5 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.5.2 NMAC - N, 12/1/08]

19.15.5.3 STATUTORY AUTHORITY: 19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.5.3 NMAC - N, 12/1/08]

19.15.5.4 DURATION: Permanent.
[19.15.5.4 NMAC - N, 12/1/08]

19.15.5.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.5.5 NMAC - N, 12/1/08]

19.15.5.6 OBJECTIVE: To establish a process to ensure compliance with the Oil and Gas Act, division rules and division and commission orders.
[19.15.5.6 NMAC - N, 12/1/08]

19.15.5.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.5.8 ENFORCEMENT OF STATUTES AND RULES: The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas including the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.
[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/08]

19.15.5.9 COMPLIANCE:

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

(1) currently meets the financial assurance requirements of 19.15.8 NMAC;

(2) is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;

(3) does not have a penalty assessment that is unpaid more than 70 days after issuance of the order assessing the penalty; and

(4) has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not subject to an agreed compliance order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met:

(a) two wells or 50 percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;

(b) five wells if the operator operates between 101 and 500 wells;

(c) seven wells if the operator operates between 501 and 1000 wells; and

(d) 10 wells if the operator operates more than 1000 wells.

B. The division shall notify an operator on a monthly basis when, according to records on file with the division, a well on the inactive well list described in Subsection F of 19.15.5.9 NMAC shows no production or injection for the past 12 months by sending a letter by first class mail to the address the operator has provided the division pursuant to Subsection C of 19.15.9.8 NMAC.

C. The division shall make available on its website and update weekly the status of operators' financial assurance 19.15.8 NMAC requires, according to division records.

D. Orders requiring corrective action.

(1) The division shall make available on its website division or commission orders, issued after notice and hearing, finding an operator to be in violation of an order requiring corrective action.

(2) An operator who contests an order finding it to be in violation of an order requiring corrective action may appeal and may seek a stay of the order. An order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.

(3) An operator who completes the corrective action the order requires may file a motion with the order's issuer to declare the order satisfied. The division or commission, as applicable, may grant the motion without hearing, or may set the matter for hearing.

E. Penalty assessments.

(1) The division shall make available on its website penalty assessments and the date the operator paid them, according to division records.

(2) An operator who contests an order assessing penalties may appeal and may seek a stay of the order. An order that is stayed pending appeal does not affect an operator's compliance with Subsection A of 19.15.5.9 NMAC.

F. Inactive wells.

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) does not have its well bore plugged in accordance with 19.15.25.9 NMAC through 19.15.25.11 NMAC;

(b) is not in approved temporary

abandonment in accordance with 19.15.25.12 NMAC through 19.15.14 NMAC; and

(c) is not subject to an agreed compliance order setting a schedule for bringing the well into compliance with 19.15.25.8 NMAC and imposing sanctions if the operator does not meet the schedule.

(2) For purposes of 19.15.5.9 NMAC, the listing of a well on the division's inactive well list as a well inactive for more than one year plus 90 days creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/08]

19.15.5.10 COMPLIANCE PROCEEDINGS:

A. The provisions in 19.15.4 NMAC applicable to adjudicatory proceedings shall apply to compliance proceedings unless altered or amended by 19.15.5.10 NMAC.

B. A compliance proceeding is an adjudicatory proceeding in which the division seeks an order imposing sanctions for violation of a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act. Such sanctions may include but are not limited to:

(1) requiring compliance with a provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or a provision of a rule or order issued pursuant to the act;

(2) assessment of civil penalties pursuant to NMSA 1978, Section 70-2-31(A);

(3) corrective action including but not limited to abatement or remediation of contamination and removal of surface equipment;

(4) plugging and abandonment of a well and restoration and remediation of the well location, and authority for the division to forfeit the applicable financial assurance if the well is not plugged and abandoned and the location restored and remediated;

(5) denial, cancellation or suspension of a permit;

(6) denial, cancellation or suspension of authorization to transport; or

(7) shutting in a well or wells.

C. The division initiates an administrative compliance proceeding by filing a written application with the division clerk:

(1) identifying the operator and any other responsible parties against whom the order is sought; including the surety if the division seeks an order allowing forfeiture of a surety bond;

(2) identifying the provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, or the provision of the rule or order issued pursuant to the act, allegedly violated;

(3) providing a general description of the facts supporting the allegations;

(4) stating the sanction or sanctions sought; and

(5) providing proposed legal notice.

D. The division shall provide notice of compliance proceedings as follows:

(1) the division shall publish notice in accordance with 19.15.4.9 NMAC.

(2) the division shall provide notice to the operator and any other responsible parties against whom the compliance order is sought by following the provisions of 19.15.4.12 NMAC.

E. The director may enter into an agreed compliance order with an entity against whom compliance is sought to resolve alleged violations of any provision of the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38 or any provision of any rule or order issued pursuant to the act. The director may enter into an agreed compliance order prior to or after the filing of an application for an administrative compliance proceeding. An agreed compliance order shall have the same force and effect as a compliance order issued after an adjudicatory hearing.

F. Nothing in 19.15.5.10 NMAC precludes the division from bringing other actions provided for in the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38, including but not limited to the following: suit for indemnification pursuant to NMSA 1978, Section 70-2-14(E) or NMSA 1978, Section 70-2-38(B); an action through the attorney general with respect to the forfeiture of illegal oil or illegal gas pursuant to NMSA 1978, Section 70-2-32; an injunction under NMSA 1978, Section 70-2-28; or collection of penalties pursuant to NMSA 1978, Section 70-2-31(A).

[19.15.5.10 NMAC - Rp, 19.15.14.1227 NMAC, 12/1/08]

19.15.5.11 ENFORCEABILITY OF PERMITS AND ADMINISTRATIVE ORDERS: A person who conducts an activity pursuant to a permit, administrative order or other written authorization or approval from the division shall comply with every term, condition and provision of the permit, administrative order, authorization or approval.

[19.15.5.11 NMAC - Rp, 19.15.1.41 NMAC, 12/1/08]

HISTORY of 19.15.5 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions (filed 04/27/2001) and 19.15.14 NMAC, Procedure (filed 09/16/2005) repealed 12/1/08.

NMAC History:

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 12, 40 & 41) (filed 04/27/2001) and 19.15.14 NMAC, Procedure (Section 1227) (filed 09/16/2005), were replaced by 19.15.5 NMAC, Enforcement and Compliance, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 6 TAX INCENTIVES

19.15.6.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.6.1 NMAC - N, 12/1/08]

19.15.6.2 SCOPE: 19.15.6 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico.

[19.15.6.2 NMAC - N, 12/1/08]

19.15.6.3 STATUTORY AUTHORITY: 19.15.6 NMAC is adopted pursuant to NMSA 1978, Section 7-29A-1 *et seq.* and Section 7-29B-1 *et seq.*

[19.15.6.3 NMAC - N, 12/1/08]

19.15.6.4 DURATION: Permanent.

[19.15.6.4 NMAC - N, 12/1/08]

19.15.6.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.

[19.15.6.5 NMAC - N, 12/1/08]

19.15.6.6 OBJECTIVE: To establish procedures for the certification of eligibility for the enhanced oil recovery project tax incentive, the production restoration project tax incentive, the well workover project tax incentive and the stripper well tax incentive.

[19.15.6.6 NMAC - N, 12/1/08]

19.15.6.7 DEFINITIONS:

A. "Average daily production" means the number derived by dividing the total volume of oil or gas production

from the stripper well property reported to the division during a calendar year by the sum of the number of days each eligible well within the property produced or injected during that calendar year.

B. "Eligible well" means an oil or gas well that produces or an injection well that injects and is integral to production, for any period of time during the preceding calendar year.

C. "Expansion or expanded use" means a significant change or modification as the division determines in:

(1) the technology or process used for the displacement of oil from an oil well or division-designated pool; or

(2) the expansion, extension or increase in size of the geologic area or adjacent geologic area that could reasonably be determined to represent a new or unique area of activity.

D. "Operator":

(1) for purposes of 19.15.6.8 NMAC, means the person responsible for an EOR project's actual physical operation; and

(2) for purposes of 19.15.6.9 NMAC, means the person responsible for an oil or gas well's actual physical operation.

E. "Positive production response" means that the rate of oil production from the wells or pools an EOR project affects is greater than the rate that would have occurred without the project.

F. "Project area" means a pool or a portion of a pool that EOR operations directly affect.

G. "Primary recovery" means the displacement of oil from an oil well or division-designated pool into the well bore by means of the natural pressure of the oil well or pool, including artificial lift.

H. "Production restoration incentive tax exemption" means the severance tax exemption for natural gas or oil produced from an approved production restoration project found in NMSA 1978, Section 7-29-4.

I. "Production restoration project" means returning to production a gas or oil well, including an injection well that has previously produced, which had no more than 30 days of production in a period of 24 consecutive months beginning on or after January 1, 1993 the division has approved and certified.

J. "Recovered oil tax rate" means the tax rate set forth in NMSA 1978, Section 7-29-4, on oil produced from an EOR project.

K. "Routine maintenance" means repair or like-for-like replacement of downhole equipment or other procedure an operator performs to maintain the well's current production.

L. "Secondary recovery project" means an EOR project that:

(1) occurs subsequent to the completion of primary recovery and is not a tertiary recovery project;

(2) involves the application, in accordance with sound engineering principles of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or other division accepted and approved secondary recovery method that can reasonably be expected to result in an increase, determined in light of the facts and circumstances, in the amount of oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled.

M. "Stripper well property" means an oil or gas producing property that the taxation and revenue department assigns a single production unit number (PUN) and:

(1) if an oil producing property, produced a daily average of less than 10 barrels of oil per eligible well per day for the preceding calendar year;

(2) if a gas producing property, produced a daily average of less than 60,000 cubic feet of gas per eligible well per day during the preceding calendar year; or

(3) if a property with wells that produce both oil and gas, produced a daily average of less than 10 barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6000 cubic feet to one barrel of oil.

N. "Stripper well incentive tax rates" means the tax rates set for stripper well properties by NMSA 1978, Sections 7-29-4 and 7-31-4.

O. "Termination" means the operator's discontinuance of an EOR project.

P. "Tertiary recovery project" means an EOR project that:

(1) occurs subsequent to a secondary recovery project's completion;

(2) involves the application, in accordance with sound engineering principles, of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or other division accepted and approved tertiary recovery method that can reasonably be expected to result in an increase, determined in light of the facts and circumstances, in the amount of oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled.

Q. "Well" means a well bore with single or multiple completions, including all horizons and producing formations from the surface to total depth.

R. "Well workover incentive tax rate" means the tax rate NMSA 1978, Section 7-29-4 imposes on gas or oil produced from a well workover project.

S. "Well workover project" means a procedure the operator of a gas or oil well undertakes that is intended to increase production from the well and that the division has approved and certified.

T. "Workover" means a procedure the operator undertakes that is intended to increase production but is not routine maintenance and includes:

(1) re-entry into the well to drill deeper, to sidetrack to a different location, to recomplete for production or to restore production from a zone that has been temporarily abandoned;

(2) recompletion by re-perforation of a zone from which gas or oil has been produced or by perforation of a different zone;

(3) repair or replacement of faulty or damaged casing or related downhole equipment;

(4) fracturing, acidizing or installing compression equipment; or

(5) squeezing, cementing or installing equipment necessary for removal of excessive water, brine or condensate from the well bore in order to establish, continue or increase production from the well.

[19.15.6.7 NMAC - Rp, 19.15.1.30 NMAC, 19.15.1.31 NMAC; 19.15.1.32 NMAC, and 19.15.1.33 NMAC, 12/1/08]

19.15.6.8 ENHANCED OIL RECOVERY PROJECT TAX INCENTIVE:

A. The division shall accept applications for qualification of EOR projects or expansions of EOR projects for the recovered oil tax rate pursuant to the New Mexico Enhanced Oil Recovery Act, NMSA 1978, Sections 7-29A-1 through 7-29A-5.

B. 19.15.6.8 NMAC applies to:

(1) EOR projects;

(2) expansions of existing EOR projects;

(3) the expanded use of enhanced oil recovery technology in existing EOR projects; and

(4) the change from a secondary recovery project to a tertiary recovery project.

C. To be eligible for the tax rate the operator shall apply for and receive division approval. No project or expansion the division approved prior to March 6, 1992 qualifies.

D. Application.

(1) The operator shall file applications with the division's Santa Fe office. The operator shall also file one copy of the application and attachments with the appropriate division district office.

(2) The operator or its authorized representative having knowledge of the facts in the application shall execute and certify an application, which shall contain:

(a) the operator's name and address;

(b) the project area's description including:

(i) a plat outlining the project area;

(ii) a description of the project area by section, township and range; total acres; and

(iii) the name of the subject pool and formation;

(c) the status of operations in the project area:

(i) if unitized, the unit name and the date and number of the division order approving the unit plan of operation;

(ii) if an application for approval of a unit plan has been made, the date the application was filed with the division; and

(iii) if not unitized, identification of each lease in the project area by lessor, lessee and legal description;

(d) the method of recovery to be used:

(i) identification of the fluids to be injected;

(ii) if the division has approved the project, the date and number of the division order; and

(iii) if the division has not approved the project, the date the application for approval was filed with the division on form C-108;

(e) the project description:

(i) a list of producing wells;

(ii) a list of injection wells;

(iii) the capital costs of additional facilities;

(iv) the total project cost;

(v) the estimated total value of the additional production that will be recovered as a result of the project;

(vi) the anticipated date for commencement of injection;

(vii) the type of fluid to be injected and the anticipated volumes; and if the application is made for an expansion of an existing project, an explanation of what changes in technology the operator will use or what additional geographic area the operator will add to the project area; and

(f) production data including graphs, charts and other supporting data showing the production history and production forecast of oil, gas, casinghead gas and water from the project area.

E. Approval and certification.

(1) Project approval. The division shall approve an EOR project and designate the project area for the recovered oil tax rate when the operator proves that:

(a) the application of the proposed enhanced recovery techniques to the reservoir should result in an increase in the amount of oil that may be ultimately recovered;

(b) the project area has been so depleted that it is prudent to apply enhanced recovery techniques to maximize the ultimate recovery of oil; and

(c) the application is economically and technically reasonable and has not been prematurely filed.

(2) Positive production response certification.

(a) For the recovered oil tax rate to apply to oil produced from an approved qualified EOR project, the operator shall demonstrate a positive production response to the division and file an application for certification of a positive production response with the division's Santa Fe office, which shall include:

(i) a copy of the division's approval of the EOR project or expansion;

(ii) a plat of the affected area showing all injection and producing wells with completion dates; and

(iii) production graphs and supporting data demonstrating a positive production response and showing the volumes of water or other substances that have been injected on the lease or unit since initiation of the EOR project.

(b) The director may administratively approve an application and certify a positive production response or, at the director's discretion or at the applicant's request, may set the application for hearing.

(c) The division shall certify that a positive production response occurred and notify the secretary of taxation and revenue; this certification and notice shall set forth the date the certification was made and the date the positive production response occurred provided however:

(i) for a secondary recovery project, the application for certification of a positive production response shall occur not later than five years from the date the division issued the certification of approval for the EOR project or expansion; and

(ii) for a tertiary recovery project, the application for certification of a positive production response must occur not later than seven years from the date the division issues the certification of approval for the EOR project or expansion.

F. Reporting requirements.

(1) The operator of an approved EOR project shall report annually on the project's status and confirm that the project is still a viable EOR project as approved. The operator shall file the report for the year ending May 31 with the division's Santa Fe office. The report shall contain:

(a) the date and number of the division's certification order for the project;

(b) production graphs showing oil, gas and water production;

(c) a graph showing the volumes of fluid injected and the average injection pressures; and

(d) additional data the director deems necessary for continued approval.

(2) The director may set for hearing the continued approval of an EOR project.

G. Termination. When the operator terminates active operation of an EOR project or expansion, the operator shall notify the division and the secretary of taxation and revenue in writing not later than the 30th day after the EOR project's termination or expansion.

[19.15.6.8 NMAC - Rp, 19.15.1.30 NMAC, 12/1/08]

19.15.6.9 PRODUCTION RESTORATION PROJECT TAX INCENTIVE:

A. The division shall accept applications for qualification of production restoration projects for the production restoration incentive tax exemption pursuant to the Natural Gas and Crude Oil Production Incentive Act, NMSA 1978, Sections 7-29B-1 through 7-29B-6.

B. 19.15.6.9 NMAC applies to gas or oil wells division records show had 30 days or less production in a period of 24 consecutive months beginning on or after January 1, 1993 upon which the operator commenced operations to restore production after June 16, 1995.

C. To be eligible for the exemption, the operator shall apply for and receive division approval. No production restoration project commenced prior to June 16, 1995 qualifies.

D. Applications.

(1) An operator shall file an application with the division within 12 months of the production restoration.

(2) The operator shall file the application on behalf of the project's interest owners.

(3) The operator shall file the application on form C-139 using the division's web-based online application.

E. Approval, certification, notification and hearing.

(1) Project approval and certifica-

tion.

(a) The division shall approve a project and issue a certification to the operator designating the gas or oil well as a production restoration project when the operator proves that:

(i) after June 16, 1995, the operator has commenced a process to return the well to production; and

(ii) division records show the well had 30 days or less of production in any period of 24 consecutive months beginning on or after January 1, 1993.

(b) The exemption shall apply beginning the first day of the month following the date the operator returned the well to production as certified by the division.

(2) Notification to the secretary of taxation and revenue. The division shall notify the secretary of taxation and revenue of the approval. This notice shall identify the gas or oil well as a production restoration project and certify the date production was restored.

(3) Hearing. The division shall consider applications without a hearing. If the appropriate division district office denies an application, the division upon the applicant's request shall set the application for hearing. An application the appropriate division district office has not acted upon within 30 days from the date it is filed shall be deemed denied.

[19.15.6.9 NMAC - Rp, 19.15.1.31 NMAC, 12/1/08]

19.15.6.10 WELL WORKOVER PROJECT TAX INCENTIVE:

A. The division shall accept applications for qualification of well workover projects for the well workover incentive tax rate pursuant to the Natural Gas and Crude Oil Production Incentive Act, NMSA 1978, Sections 7-29B-1 through 7-29B-6.

B. 19.15.6.10 NMAC applies to a gas or oil well upon which the operator has commenced a workover after June 16, 1995 that is intended to increase the well's production.

C. To be eligible for the incentive tax rate, the operator shall apply for and receive division approval. No well workover project the operator commences prior to June 16, 1995 qualifies.

D. Application.

(1) The operator shall file the application with the division within 12 months of the workover's completion.

(2) The operator shall file on behalf of the project's interest owners.

(3) The operator shall retain the data used in the application in its files during the period of time the well qualifies for and receives the well workover incentive tax rate.

(4) The operator shall file the application on form C-140 using the division's web-based online application.

E. Approval, certification, notification and hearing.

(1) Project approval and certification.

(a) The division shall approve a workover and issue a certification of approval to the operator designating the gas or oil well as a well workover project when the operator proves that:

(i) the operator has undertaken approved workover procedures on the well that are intended to increase production; and

(ii) the production curve or data tabulation from production data reflects a positive production increase from the workover.

(b) The incentive tax rate shall apply beginning the first day of the month following the date the operator completed the workover as certified by the division.

(2) Notification to the secretary of taxation and revenue. The division shall notify the secretary of taxation and revenue of the approval by identifying the gas or oil well as a well workover project and certifying the date the operator completed the project.

(3) Hearings and requests for additional information.

(a) The division shall consider applications without a hearing. If the appropriate division district office denies an application, the division upon the applicant's request shall set the application for hearing. An application the division district office does not act on within 30 days from the date it is filed is deemed denied.

(b) The division may request additional information from the operator to support an application. When the division requests additional information, the 30-day approval period shall begin to run on the date the operator provides the requested data.

F. Certifications prior to July 1, 1999. Well workover projects the division certified prior to July 1, 1999 shall be deemed to be approved and certified in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and gas or oil produced from those projects shall be eligible for the well workover incentive tax rate effective July 1, 1999.

[19.15.6.10 NMAC - Rp, 19.15.1.32 NMAC, 12/1/08]

19.15.6.11 STRIPPER WELL TAX INCENTIVE:

A. Qualification of stripper well properties for the stripper well incentive tax rates in NMSA 1978, Sections 7-29-4 and 7-31-4, requires division certification. The division shall certify stripper well properties for calendar year 1998 no later than June 30, 1999 and no later than June 1 of each succeeding year for the preceding calendar year.

B. 19.15.6.11 NMAC applies to a property that the division certifies as a stripper well property after June 30, 1999.

C. Certification, notification and hearing.

(1) The division shall determine which wells qualify as stripper well properties.

(2) Upon certification of properties as stripper well properties, the division shall notify the operator and the secretary of taxation and revenue of that certification.

(3) The operator shall notify the interest owners of the certification of the property as a stripper well property.

(4) An operator may make a written request that the division reevaluate a property for stripper well status.

(5) If the division denies stripper well certification to a property, the division upon the operator's request shall set the matter for hearing.

[19.15.6.11 NMAC - Rp, 19.15.1.33 NMAC, 12/1/08]

HISTORY of 19.15.6 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions (filed 04/27/2001) repealed 12/1/08.

NMAC History:

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 30, 31, 32, and 33) (filed 04/27/2001), were replaced by 19.15.6 NMAC, Tax Incentives, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 7 FORMS AND REPORTS

19.15.7.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.7.1 NMAC - Rp, 19.15.13.1 NMAC, 12/1/08]

19.15.7.2 SCOPE: 19.15.7 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico.
[19.15.7.2 NMAC - Rp, 19.15.13.2 NMAC, 12/1/08]

19.15.7.3 STATUTORY AUTHORITY: 19.15.7 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.7.3 NMAC - Rp, 19.15.13.3 NMAC, 12/1/08]

19.15.7.4 DURATION: Permanent.
[19.15.7.4 NMAC - Rp, 19.15.13.4 NMAC, 12/1/08]

19.15.7.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.7.5 NMAC - Rp, 19.15.13.5 NMAC, 12/1/08]

19.15.7.6 OBJECTIVE: To provide for the filing of reports to enable the division to carry out its statutory mandates under the Oil and Gas Act.
[19.15.7.6 NMAC - Rp, 19.15.13.6 NMAC, 12/1/08]

19.15.7.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.7.8 GENERAL:

A. Where to file reports. Unless otherwise specifically provided for in a division rule or order, the operator shall file forms and reports 19.15.7 NMAC requires with the appropriate division district office as provided in 19.15.2.17 NMAC and 19.15.7.10 NMAC.

B. Additional data. 19.15.7 NMAC does not limit or restrict the division's authority to require the furnishing of additional reports, data or other information relative to the production, transportation, storing, refining, processing or handling of oil, gas or products in the state as may appear to the division to be necessary or desirable, either generally or specifically, for the prevention of waste and the conservation of the state's natural resources.

C. Books and records. A producer, injector, transporter, storer, refiner, gasoline or extraction plant operator, treating plant operator and initial purchaser of gas within the state shall make and keep appropriate books and records for a period of not less than five years, covering operations in New Mexico, in order to make and substantiate the reports the division requires.

D. Written notices, requests, permits and reports. A person required to file notices, requests, permits or reports shall use the forms listed below for the purpose shown in accordance with the instructions printed on the form and the rule covering the form's use or special order pertaining to its use:

(1) form C-101 - application for permit to drill, deepen or plug back;

(2) form C-102 - well location and acreage dedication plat;

(3) form C-103 - sundry notices and reports on wells;

(4) form C-104 - request for allowable and authorization to transport oil and gas;

(5) form C-105 - well completion or recompletion report and log;

(6) form C-106 - notice of intention to utilize automatic custody transfer equipment;

(7) form C-107 - application for multiple completion;

(8) form C-107-A - application for downhole commingling;

(9) form C-107-B - application for surface commingling (diverse ownership);

(10) form C-108 - application to dispose of salt water by injection into a porous formation;

(11) form C-109 - application for discovery allowable and creation of a new pool;

(12) form C-111 - gas transporter's monthly report (sheet 1 and sheet 2);

(13) form C-112 - transporter's and storer's monthly report;

(14) form C-112-A - receipts continuation sheet;

(15) form C-112-B - deliveries continuation sheet;

(16) form C-113 - refiner's monthly report (sheet 1 and sheet 2);

(17) form C-115 - operator's monthly report;

(18) form C-115-EDP - operator's monthly report (electronic data processing);

(19) form C-116 - gas-oil ratio tests;

(20) form C-117-A - tank cleaning, sediment oil removal, transportation of miscellaneous hydrocarbons and disposal permit;

(21) form C-117-B - monthly sediment oil disposal statement;

(22) form C-118 - treating plant operator's monthly report (sheet 1 and sheet 2);

(23) form C-120-A - monthly water disposal report;

(24) form C-121 - oil purchaser's nomination;

(25) form C-121-A - purchaser's gas nomination;

(26) form C-122 - multi-point and one point back pressure test for gas wells;

(27) form C-122-A - gas well test data sheet-San Juan basin (initial deliverability test, blue paper; annual deliverability test, white);

(28) form C-122-B - initial potential test data sheet;

(29) form C-122-C - deliverability test report;

(30) form C-122-D - worksheet for calculation of static column wellhead pressure (P_w);

(31) form C-122-E - worksheet for stepwise calculation of (surface) (subsurface) pressure (P_c and P_w);

(32) form C-122-F - worksheet for calculation of wellhead pressures (P_c or P_w) from known bottom hole pressure (P_f or P_s);

(33) form C-122-G - worksheet for calculation of static column pressure at gas liquid interface;

(34) form C-123 - request for the creation of a new pool;

(35) form C-124 - reservoir pressure report;

(36) form C-125 - gas well shut-in pressure report;

(37) form C-126 - permit to transport recovered load oil;

(38) form C-127 - request for allowable change;

(39) form C-129 - application for exception to no-flare;

(40) form C-130 - notice of disconnection;

(41) form C-131-A - monthly gas storage report;

(42) form C-131-B - annual LPG storage report;

(43) form C-133 - authorization to move produced water exhibit "A";

(44) form C-134 - application for exception to division order R-8952, 19.15.18.18 NMAC or 19.15.36 NMAC;

(45) form C-135 - gas well connection, reconnection or disconnection

notice;

(46) form C-136 - application for approval to use an alternate gas measurement method;

(47) form C-137 - application for waste management facility;

(48) form C-137-EZ - registration/final closure report for small landfarm;

(49) form C-138 - request for approval to accept solid waste;

(50) form C-139 - application for qualification of production restoration project and certification of approval;

(51) form C-140 - application for qualification of well workover project and certification of approval;

(52) form C-141 - release notification and corrective action;

(53) form C-144 - pit, closed-loop system, below-grade tank or proposed alternative method permit or closure plan application;

(54) form C-145 - change of operator; and

(55) form C-146 - change of operator name.

[19.15.7.8 NMAC - Rp, 19.15.13.1100 NMAC, 12/1/08]

19.15.7.9 FORMS UPON REQUEST: The division's forms for written notices, requests and reports it requires are available on the division's website. The division shall furnish paper copies upon request.

[19.15.7.9 NMAC - Rp, 19.15.1.16 NMAC, 12/1/08]

19.15.7.10 WHERE TO FILE REPORTS AND FORMS: A person required to file a report or form shall file the report or form with the division in the number and at the time specified on the form or report or by the applicable section in 19.15.7 NMAC. An operator shall file plugging bonds directly with the division's Santa Fe office.

[19.15.7.10 NMAC - Rp, 19.15.15.1302 NMAC, 12/1/08]

19.15.7.11 UNITED STATES GOVERNMENT LEASES: For wells located on land that the United States or a native american nation, tribe or pueblo owns, an operator shall file applications for permit to drill, deepen or plug back, BLM form no. 3160-3; sundry notices and reports on wells, BLM form no. 3160-5; and well completion or recompletion report and log, BLM form no. 3160-4 with the BLM in lieu of filing the corresponding division forms with the division. All such forms are, however, subject to division approval in the same manner and to the same extent as the corresponding division forms.

[19.15.7.11 NMAC - Rp, 19.15.1.14 NMAC, 12/1/08]

19.15.7.12 APPLICATION FOR PERMIT TO DRILL, DEEPEN OR PLUG BACK (Form C-101): Form C-101 is the form an operator uses to apply for a permit to drill, deepen, re-enter or plug a well back to a different pool or complete or re-complete a well in an additional pool.

[19.15.13.12 NMAC - Rp, 19.15.13.1101 NMAC, 12/1/08]

19.15.7.13 WELL LOCATION AND ACREAGE DEDICATION PLAT (Form C-102):

A. Form C-102 is a dual purpose form the operator uses to show the well's exact location and the acreage dedicated to the well. The form is also used to show the ownership and status of each lease contained within the dedicated acreage. When there is more than one working interest or royalty owner on a given lease, designation of the majority owner et al. is sufficient.

B. An operator shall fill out and certify the information required on form C-102 except the well location on the plat. A professional surveyor, registered in the state of New Mexico, or surveyor approved by the division, shall plot and certify the well location on the plat from the section's outer boundaries.

C. An operator shall file amended form C-102 in the event there is a change in the information the operator previously submitted. The operator does not need to provide certification of the well location when filing amended form C-102.

[19.15.13.13 NMAC - Rp, 19.15.13.1102 NMAC, 12/1/08]

19.15.7.14 SUNDRY NOTICES AND REPORTS ON WELLS (Form C-103): Form C-103 is a dual purpose form the operator files with the appropriate division district office to obtain division approval prior to commencing certain operations and to report various completed operations.

A. Form C-103 as a notice of intention.

(1) An operator shall file form C-103 and obtain the division's approval prior to:

(a) effecting a change of plans from those the division previously approved on form C-101 or form C-103;

(b) altering a drilling well's casing program or pulling casing or otherwise altering an existing well's casing installation;

(c) making multiple completions in a well;

(d) placing a well in approved temporary abandonment;

(e) plugging and abandoning a well;

(f) performing remedial work on a well that, when completed, will affect the well's original status (this includes making new perforations in existing wells or squeezing old perforations in existing wells, but does not apply to new wells in the process of being completed nor to old wells being deepened or plugged back to another zone when the division has authorized the recompletion by an approved form C-101, application for permit to drill, re-enter, deepen plug back or add a zone, nor to acidizing, fracturing or cleaning out previously completed wells, nor to installing artificial lift equipment); or

(g) downhole commingling in well bores, within pools or areas that the division has established as pre-approved pools or areas.

(2) In the case of well plugging operations, the notice of intention shall include a detailed statement of the proposed work including plans for shooting and pulling casing; plans for mudding, including the mud's weight; plans for cementing, including number of sacks of cement and depths of plugs; restoration and remediation of the location; and the time and date of the proposed plugging operations. The operator shall file a complete log of the well on form C-105 with the notice of intention to plug the well, if the operator has not previously filed the log (see 19.15.7.16 NMAC); the division shall not release the financial assurance until the operator complies with this requirement.

B. Form C-103 as a subsequent report.

(1) The operator shall file form C-103 as a subsequent report of operations in accordance with 19.15.7.14 NMAC as applicable to the particular operation being reported.

(2) The operator shall use form C-103 in reporting such completed operations as:

(a) commencement of drilling operations;

(b) casing and cement test;

(c) altering a well's casing installation;

(d) work to secure approved temporary abandonment;

(e) plugging and abandonment;

(f) plugging back or deepening within the same pool;

(g) remedial work;

(h) installation of artificial lifting equipment; or

(i) other operations that affect the well's original status but that are not specifically covered in 19.15.7.14 NMAC.

C. Report of commencement of drilling operations. Within 10 days

following the commencement of drilling operations, the operator shall file a report of commencement on form C-103. The report shall indicate the hour and the date the operator spudded the well.

D. Report of results of test of casing and cement job; report of casing alteration. The operator shall file a report of casing and cement test within 10 days following the setting of each string of casing or liner. The operator shall file the report on form C-103 and include a detailed description of the test method employed and the results obtained by the test and any other pertinent information 19.15.16.10 NMAC requires. The report shall also indicate the top of the cement and the means by which the operator determined the top. It shall also indicate any changes from the casing program previously authorized for the well.

E. Report of temporary abandonment. The operator shall file a notice of work to secure approved temporary abandonment within 30 days following the work's completion. The report shall present a detailed account of the work done on the well, including location and type of plugs used, if any, and status of surface and downhole equipment and any other pertinent information relative to the well's overall status.

F. Report on plugging of well.

(1) The operator shall file a report of plugging operations within 30 days following completion of plugging operations on a well. The operator shall file the report on form C-103, which shall include the date the operator began plugging operations and the date the operator completed the work, a detailed account of the manner in which the operator performed the work including the depths and lengths of the various plugs set, the nature and quantities of materials employed in the plugging operations including the weight of the mud used, the size and depth of all casing left in the hole and any other pertinent information. (See 19.15.25 NMAC regarding plugging operations.)

(2) The division shall not approve a plugging report until the operator demonstrates compliance with Subsection B of 19.15.25.10 NMAC. The operator shall contact the appropriate division district office when the operator has restored the location in order to arrange for a division representative's inspection of the plugged well and the location.

G. Report of remedial work. The operator shall file a report of remedial work performed on a well within 30 days following the work's completion. The operator shall file the report on form C-103 and present a detailed account of the work done and the manner in which the operator performed the work; the daily production of oil, gas and water both prior to and after the remedial operation; the size and depth of shots; the quantity and type of crude, chemical or other materials the operator employed in the operation; and any other pertinent information. Among the remedial work an operator shall report on form C-103 are the following:

(1) report on shooting, fluid fracturing or chemical treatment of a previously completed well;

(2) report of squeeze job;

(3) report on setting of liner or packer;

(4) report of installation of pumping equipment or gas lift facilities; or

(5) report of any other remedial operations that are not specifically covered herein.

H. Report on deepening or plugging back within the same pool. An operator shall file a report of deepening or plugging back within 30 days following completion of the operations on a well. The operator shall file the report on form C-103 and present a detailed account of work done and the manner in which the operator performed the work. If the operator recompletes the well in the same pool, the operator shall also report the daily production of oil, gas and water both prior to and after recompletion. If the well is recompleted in another pool, the operator shall file forms C-101, C-102, C-104 and C-105 in accordance with 19.15.7.12 NMAC, 19.15.7.13 NMAC, 19.15.7.15 NMAC and 19.15.7.16 NMAC.

I. Other reports on wells. The operator shall submit reports on other operations that affect the well's original status but that are not specifically covered in 19.15.7.14 NMAC to the division on form C-103 10 days following the operation's completion.

[19.15.7.14 NMAC - Rp, 19.15.13.1103 NMAC, 12/1/08]

19.15.7.15 REQUEST FOR ALLOWABLE AND AUTHORIZATION TO TRANSPORT OIL AND GAS (Form C-104): An operator shall file with the division a complete form C-104 to request the division assign an allowable to a newly completed or re-completed well or a well completed in an additional pool or issue an operator authorization to transport oil or gas from the well.

[19.15.7.15 NMAC - Rp, 19.15.13.1104 NMAC, 12/1/08]

19.15.7.16 WELL COMPLETION OR RECOMPLETION REPORT AND LOG (Form C-105):

A. Within 20 days following the completion or recompletion of a well, the operator shall file form C-105 with the appropriate division district office accompanied by a summary of special tests conducted on the well, including drill stem tests. In addition, the operator shall file a copy of electrical and radio-activity logs run on the well with form C-105. If the division does not receive form C-105 with attached logs and summaries within the specified 20-day period, the division shall withhold the allowable for the well until the operator has complied with 19.15.7.16 NMAC.

B. In the case of a dry hole, a complete record of the well on form C-105 with the attachments listed in Subsection A of 19.15.7.16 NMAC shall accompany the notice of intention to plug the well, unless previously filed. The division shall not approve the plugging report or release the bond the operator has complied with 19.15.7.16 NMAC.

C. The division shall not keep form C-105 and accompanying attachments confidential unless the well's owner requests in writing that the division keep it confidential. Upon such request, the division shall keep these data confidential for 90 days from the date of the well's completion, provided, however, that the report, logs and other attached data may, when pertinent, be introduced in a public hearing before division examiners, the commission or in a court of law, regardless of the request that they be kept confidential.

[19.15.7.16 NMAC - Rp, 19.15.13.1105 NMAC, 12/1/08]

19.15.7.17 NOTICE OF INTENTION TO UTILIZE AUTOMATIC CUSTODY TRANSFER EQUIPMENT (Form C-106): An operator intending to use an ACT system shall file form C-106, when applicable, in accordance with Subsection A of 19.15.18.15 NMAC.

[19.15.7.17 NMAC - Rp, 19.15.13.1106 NMAC, 12/1/08]

19.15.7.18 APPLICATION FOR MULTIPLE COMPLETION (Form C-107): An operator shall file form C-107, when applicable, in accordance with Subsection A of 19.15.16.15 NMAC.

[19.15.7.18 NMAC - Rp, 19.15.13.1107 NMAC, 12/1/08]

19.15.7.19 APPLICATION FOR AUTHORIZATION TO INJECT (Form C-108): An operator shall file form C-108 in accordance with Subsection B of 19.15.26.8 NMAC.

[19.15.7.19 NMAC - Rp, 19.15.13.1108 NMAC, 12/1/08]

19.15.7.20 APPLICATION FOR DISCOVERY ALLOWABLE AND CREATION OF A NEW POOL (Form C-109): An operator shall file form C-109, when applicable, in accordance with 19.15.20.16 NMAC.

[19.15.7.20 NMAC - Rp, 19.15.13.1109

NMAC, 12/1/08]

19.15.7.21 GAS TRANSPORTER'S MONTHLY REPORT (Form C-111):

A. An operator shall complete and maintain for the division's inspection, form C-111 monthly in accordance with Subsections B, C and D of 19.15.7.21 NMAC. The transporter shall itemize information on sheet no. 2 of form C-111 by pool, by operator and by lease, in alphabetical order.

B. An operator of a gas gathering system, gas transportation system, recycling system, fuel system, gas lift system, gas drilling operation, etc. shall complete and maintain for division inspection form C-111 each month. The form shall cover gas, casinghead gas and carbon dioxide gas taken into a system during the preceding month and shall show the gas' source and its disposition.

C. An operator of a gasoline plant, cycling plant or other plant at which gasoline, butane, propane, kerosene, oil or other products are extracted from gas within the state shall complete and maintain for the division's inspection form C-111 each month. The form shall cover gas, casinghead gas and carbon dioxide gas the plant has taken during the preceding month and shall show the gas' source and its disposition. If an operator owns more than one plant in a given division district, the operator shall file sheet no. 1 of form C-111 for each plant. In preparing sheet no. 2, the operator shall consolidate requisitions for plants in the district, itemized in the order described in the Subsection A of 19.15.7.21 NMAC.

D. Where a producer takes gas and uses it for any of the above uses, the producer shall complete and maintain for division inspection form C-111 itemizing such gas. The producer shall also include this gas on form C-115. The producer shall also include gas used on the lease from which it was produced for consumption in lease houses, treaters, compressors, combustion engines and other similar equipment, or gas that is flared, on the form C-115 but shall not include it on form C-111.

[19.15.7.21 NMAC - Rp, 19.15.13.1111 NMAC, 12/1/08]

19.15.7.22 TRANSPORTER'S AND STORER'S MONTHLY REPORT (Form C-112): A transporter or storer of oil and liquid hydrocarbons within the state shall complete and maintain for division inspection for each calendar month a form C-112 containing complete information and data indicated by the form respecting stocks of oil and liquid hydrocarbons on hand and receipts and deliveries of oil and liquid hydrocarbons by pipeline and trucks within the state, and receipts and deliveries from leases to storers or refiners; between transporters within the state; between storers and refiners within the state.

[19.15.7.22 NMAC - Rp, 19.15.13.1112 NMAC, 12/1/08]

19.15.7.23 REFINER'S MONTHLY REPORT (Form C-113): A refiner of oil within the state shall file for each calendar month form C-113 containing the information and data indicated by the form respecting oil and products involved in the refiner's operation during each month. The refiner shall file the completed form C-113 for each month and postmark it on or before the 15th day of the next succeeding month.

[19.15.7.23 NMAC - Rp, 19.15.13.1113 NMAC, 12/1/08]

19.15.7.24 OPERATOR'S MONTHLY REPORT (Form C-115):

A. An operator shall file a form C-115 for each non-plugged well completion for which the division has approved a form C-104 and for each secondary or other enhanced recovery project or pressure maintenance project injection well or other injection well within the state, setting forth complete information and data indicated on the forms in the order, format and style the director prescribes. The operator shall estimate oil production from wells producing into common storage as accurately as possible on the basis of periodic tests.

B. An operator shall file the reports 19.15.7.24 NMAC requires using the division's web-based online application on or before the 15th day of the second month following the month of production, or if such day falls on a weekend or holiday, the first workday following the 15th. An operator may apply to the division for exemption from the electronic filing requirement based upon a demonstration that such requirement would operate as an economic or other hardship.

C. If an operator fails to file a form C-115 that the division accepts, the division shall, within 60 days of the appropriate filing date, notify the operator by electronic mail or letter of its intent to revoke the operator's authorization to transport or inject if the operator does not file an acceptable and complete form C-115. If the operator does not file an acceptable and complete form C-115 or request a hearing on the proposed cancellation within 120 days of the original due date of the form C-115, the division may cancel the operator's authority to transport from or inject into all wells it operates.

[19.15.7.24 NMAC - Rp, 19.15.13.1115 NMAC, 12/1/08]

19.15.7.25 GAS-OIL RATIO TESTS (Form C-116): An operator shall make and report gas-oil ratio tests on form C-116 as prescribed in 19.15.18.8 NMAC and applicable special pool orders. The operator shall file the form C-116.

[19.15.7.25 NMAC - Rp, 19.15.13.1116 NMAC, 12/1/08]

19.15.7.26 TANK CLEANING, SEDIMENT OIL REMOVAL, TRANSPORTATION OF MISCELLANEOUS HYDROCARBONS AND DISPOSAL PERMIT (Form C-117-A) AND MONTHLY SEDIMENT OIL DISPOSAL STATEMENT (Form C-117-B):

A. An operator shall file form C-117-A with the appropriate division district office in accordance with Subsections B, C and H of 19.15.18.17 NMAC.

B. An operator shall file form C-117-B with the division's Santa Fe office and the appropriate division district office in accordance with Subsection D of 19.15.18.17 NMAC.

[19.15.7.26 NMAC - Rp, 19.15.13.1117 NMAC, 12/1/08]

19.15.7.27 TREATING PLANT OPERATOR'S MONTHLY REPORT (Form C-118): A treating plant operator shall file on a monthly basis form C-118 with the appropriate division district office. The form C-118 shall contain all the information the form requires. Column 1 of sheet 1-A of form C-118 entitled permit number, references form C-117-A, for each lot of oil the operator picked up for processing.

[19.15.7.27 NMAC - Rp, 19.15.13.1118 NMAC, 12/1/08]

19.15.7.28 MONTHLY WATER DISPOSAL REPORT (Form C-120-A): An operator of a salt water disposal system shall report its operations on form C-120-A. The operator shall file form C-120-A in duplicate, with one copy to the division's Santa Fe office and one copy to the appropriate division district office, and shall postmark the form no later than the 15th day of the second succeeding month.

[19.15.7.28 NMAC - Rp, 19.15.13.1120 NMAC, 12/1/08]

19.15.7.29 PURCHASER'S NOMINATION FORMS (Form C-121 and Form C-121-A):

A. Unless the director requests otherwise, a person expecting to purchase oil from producing wells in New Mexico during the second and third succeeding two months shall file form C-121 with the division's Santa Fe office not later

than the 20th day of each odd-numbered month. As an example, nominations submitted by the 20th day of July shall indicate the amount of oil the purchaser desires to purchase daily during September and October

B. The person shall file form C-121-A with the division's Santa Fe office by the first day of the month during which the division will consider at the gas allowable hearing the nominations for the purchase of gas from producing wells in New Mexico during the succeeding month. As an example, purchaser's nominations to take gas from a pool during the month of August would be considered by the division at a hearing during July, and should be submitted to the Santa Fe office of the division by July 1.

C. In addition to the monthly gas nominations, the purchaser shall file 12-month nominations in accordance with the appropriate special pool orders.

[19.15.7.29 NMAC - Rp, 19.15.13.1121 NMAC, 12/1/08]

19.15.7.30 MULTIPOINT AND ONE POINT BACK PRESSURE TEST FOR GAS WELL (Form C-122):

A. Gas well test data sheet - San Juan basin (form C-122-A)

B. Initial potential test data sheet (form C-122-B)

C. Deliverability test report (form C-122-C)

D. Worksheet for calculation of static column wellhead pressure (P_w) (form C- 122-D)

E. Worksheet for stepwise calculation of (surface) (subsurface) pressure (P_c & P_w) (P_f & P_s) (form C-122-E)

F. Worksheet for calculation of wellhead pressures (P_c or P_w) from known bottom hole pressure (P_f or P_s) (form C-122-F)

G. Worksheet for calculation of status column pressure at gas liquid interface (form C-122-G). The operator shall file the forms listed in Subsections A through F of 19.15.7.30 NMAC with the appropriate division district office in accordance with the provisions of the *manual for back-pressure testing of natural gas wells or gas well testing manual for northwest New Mexico*, 19.15.19.8 NMAC and applicable special pool orders and proration orders.

[19.15.7.30 NMAC - Rp, 19.15.13.1122 NMAC, 12/1/08]

19.15.7.31 REQUEST FOR THE CREATION OF A NEW POOL (Form C-123): The appropriate division district office shall provide the operator of a well that requires the creation of a pool written instructions regarding the filing of form C-123.

[19.15.7.31 NMAC - Rp, 19.15.13.1123 NMAC, 12/1/08]

19.15.7.32 RESERVOIR PRESSURE REPORT (Form C-124):

A. An operator shall file form C-124 to report bottom hole pressures as required under the provisions of 19.15.18.9 NMAC and applicable special pool orders.

B. An operator shall state the name of the pool; the pool datum, if established; the name of the operator and lease; the well number; the wellhead elevation above sea level; the date of the test; the total time the well was shut in prior to the test, the subsurface temperature in degrees fahrenheit at the test depth; the depth in feet at which the operator made the subsurface pressure test; the observed pressure in psi gauge corrected for calibration and temperature; the corrected pressure computed from applying to the observed pressure the appropriate correction for difference in test depth and reservoir datum plane; and any other information required on form C-124.

[19.15.7.32 NMAC - Rp, 19.15.13.1124 NMAC and 19.15.5.302 NMAC, 12/1/08]

19.15.7.33 GAS WELL SHUT-IN PRESSURE TESTS (Form C-125): An operator shall file form C-125 to report shut-in pressure tests on gas wells as required under the provisions of special pool orders.

[19.15.7.33 NMAC - Rp, 19.15.13.1125 NMAC, 12/1/08]

19.15.7.34 PERMIT TO TRANSPORT RECOVERED LOAD OIL (Form C-126): An applicant to transport recovered load oil shall file form C-126 with the appropriate division district office in conformance with 19.15.20.15 NMAC.

[19.15.7.34 NMAC - Rp, 19.15.13.1126 NMAC, 12/1/08]

19.15.7.35 REQUEST FOR ALLOWABLE CHANGE (Form C-127): An oil producer shall file form C-127 with the appropriate division district office not later than the 10th day of the month preceding the month for which an oil producer is requesting oil well allowable changes.

[19.15.7.35 NMAC - Rp, 19.15.13.1127 NMAC, 12/1/08]

19.15.7.36 FORMS REQUIRED ON FEDERAL LAND:

A. An operator shall use federal forms in lieu of state forms when filing application for permit to drill, deepen or plug back and sundry notices and reports on wells and well completion or recompletion report and log for wells on federal lands in New Mexico. However, the operator shall submit two extra copies of each of the forms to the BLM, which, upon approval, will transmit the forms to the division. An operator of a well

BLM Form No.	Title of Form (Same for both agencies)	Form No.
3160-3 (Nov. 1993)	Application for Permit to Drill, Deepen or Plug Back	C-101
3160-5 (Nov. 1983)	Sundry Notices and Reports on Wells	C-103
3160-4 (Nov. 1983)	Well Completion or Recompletion Re port and Log	C-105

on federal land shall use the following BLM forms in lieu of division forms:

B. The above forms as the BLM may revise are the only forms that an operator may file in place of division forms.

C. After a well is completed and ready for pipeline connection, the operator shall file form C-104 along with a copy of form C-105 or BLM form No. 3160-4, whichever is applicable, with the division on wells drilled in the state, regardless of land status. Further, the operator shall file production reports using division forms; the division will not accept federal forms for reporting production.

D. An operator's failure to comply with 19.15.7.36 NMAC shall result in the division's cancellation of form C-104 for the affected well or wells.

[19.15.7.36 NMAC - Rp, 19.15.13.1128 NMAC, 12/1/08]

19.15.7.37 APPLICATION FOR EXCEPTION TO NO-FLARE (Form C-129): An operator shall file form C-129 when applicable, in accordance with 19.15.18.12 NMAC.

[19.15.7.37 NMAC - Rp, 19.15.13.1129 NMAC, 12/1/08]

19.15.7.38 NOTICE OF DISCONNECTION (Form C-130):

A. An operator shall file form C-130 with the division as provided in 19.15.19.13 NMAC.

B. An operator shall state to the best of its knowledge the reasons for disconnecting a gas well from gas transportation facilities.

C. The division shall furnish the New Mexico public regulation commission with a form C-130 indicating that a disconnected gas well may or will be reconnected to a gas transportation facility for ultimate distribution to consumers outside of the state.

[19.15.7.38 NMAC - Rp, 19.15.13.1130 NMAC, 12/1/08]

19.15.7.39 MONTHLY GAS STORAGE REPORT (Form C-131-A); ANNUAL LPG STORAGE REPORT (Form C-131-B):

A. An operator of an underground gas storage project shall report its operation monthly on form C-131-A. The operator shall file form C-131-A with the division's Santa Fe office with a copy to the appropriate division district office and shall postmark it not later than the 24th day of the next succeeding month.

B. An operator of underground liquefied petroleum gas storage projects approved by the division shall report its operations annually on form C-131-B.

[19.15.7.39 NMAC - Rp, 19.15.13.1131 NMAC, 12/1/08]

19.15.7.40 AUTHORIZATION TO MOVE PRODUCED WATER:

A. A transporter of produced water shall obtain the division's approval of form C-133 in accordance with 19.15.34 NMAC prior to transportation.

B. Approval of a single form C-133 is valid for leases the transporter serves.

[19.15.7.40 NMAC - Rp, 19.15.13.1133 NMAC, 12/1/08]

19.15.7.41 GAS WELL CONNECTION, RECONNECTION OR DISCONNECTION NOTICE: A gas transporter accepting gas for delivery from a wellhead or central point of delivery shall notify the division within 30 days of a new connection or reconnection to or disconnection from the gathering or transportation system by filing form C-135 with the appropriate division district office.

[19.15.7.41 NMAC - Rp, 19.15.13.1135 NMAC, 12/1/08]

19.15.7.42 APPLICATION FOR APPROVAL TO USE AN ALTERNATE GAS MEASUREMENT METHOD (Form C-136):

A. An operator shall use form C-136 to request and obtain division approval for use of an alternate procedure for measuring gas production from a well that is not capable of producing more than 15 MCFD (Paragraph (1) of Subsection B of 19.15.19.9 NMAC) or for a well that has a producing capacity of 100 MCFD or less and is on a multi-well lease (Paragraph (2) of Subsection B of 19.15.19.9 NMAC).

B. An operator shall fill out the applicable information required on form C-136 with the required supplemental information attached, and file it with the appropriate division district office.

[19.15.7.42 NMAC - Rp, 19.15.13.1136 NMAC, 12/1/08]

19.15.7.43 APPLICATION FOR PRODUCTION RESTORATION PROJECT (C-139):

A. An operator shall use the division's web-based online application to apply for the production restoration tax incentive.

B. An operator shall enter a user identification number and password that it has obtained from the division and select the well for which the operator is requesting the production restoration tax incentive. The operator shall then enter the date it began the production restoration, the date the well returned to production and the process the operator used to return the well to production. The operator shall certify that the information is complete and correct.

[19.15.7.43 NMAC - Rp, Paragraph (5) of Subsection D of 19.15.1.31 NMAC, 12/1/08]

19.15.7.44 APPLICATION FOR WELL WORKOVER PROJECT (C-140):

A. An operator shall use the division's web-based online application to apply for the well workover tax incentive.

B. An operator shall enter a user identification number and password that it has obtained from the division and select the well for which the operator is requesting the well workover tax incentive. The operator shall enter the date that it commenced the well workover and the date it completed the well workover. The operator shall attach a description of the workover procedure it performed to increase production and a production curve or data tabulation showing at least 12 months of production prior to the well workover and at least three months of production following the well workover to reflect a positive production increase.

[19.15.7.44 NMAC - Rp, Paragraph (6) of Subsection D of 19.15.1.32 NMAC, 12/1/08]

HISTORY of 19.15.7 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions (filed 04/27/2001); 19.15.13 NMAC, Reports (filed 06/17/2004) and 19.15.15 NMAC, Pits, Closed-Loop Systems, Below-Grade Tanks and Sumps (filed 5/30/2008) repealed 12/1/08.

NMAC History:

Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 14, 16, those applicable portions of 31 and 32 (filed 04/27/2001); 19.15.13 NMAC, Reports (Sections 1-6; 1100, 1101-1109, 1111-1113; 1115-1118, 1120-1131; 1133; and 1135) (filed 06/17/2004); and 19.15.15 NMAC, Pits, Closed-Loop Systems, Below-Grade Tanks and Sumps (Section 1302) (filed 5/30/2008) were all replaced by 19.15.7 NMAC, Forms and Reports, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 8 FINANCIAL ASSURANCE

19.15.8.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.8.1 NMAC - N, 12/1/08]

19.15.8.2 SCOPE: 19.15.8 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.8.2 NMAC - N, 12/1/08]

19.15.8.3 STATUTORY AUTHORITY: 19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-14.

[19.15.8.3 NMAC - N, 12/1/08]

19.15.8.4 DURATION: Permanent.

[19.15.8.4 NMAC - N, 12/1/08]

19.15.8.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.

[19.15.8.5 NMAC - N, 12/1/08]

19.15.8.6 OBJECTIVE: To establish financial assurance requirements for persons, firms, corporations or associa-

tions who have drilled or acquired, are drilling or propose to drill or acquire an oil, gas or injection or other service well to furnish financial assurance acceptable to the division.
[19.15.8.6 NMAC - N, 12/1/08]

19.15.8.7 DEFINITIONS:
[RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.8.8 GENERAL REQUIREMENTS FOR FINANCIAL ASSURANCE:

A. The operator shall file financial assurance documents with the division's Santa Fe office and obtain approvals and releases of financial assurance from that office.

B. Financial assurance documents shall be on forms prescribed by or otherwise acceptable to the division.

C. The division may require proof that the individual signing for an entity on a financial assurance document or an amendment to a financial assurance document has the authority to obligate that entity.
[19.15.8.8 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

19.15.8.9 FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. A person, firm, corporation or association who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well on privately-owned or state-owned lands within this state shall furnish a financial assurance acceptable to the division in the form of an irrevocable letter of credit or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with division rules.

B. A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose.

C. The division accepts two forms of financial assurance: a one-well financial assurance that covers a single well and a blanket financial assurance that covers multiple wells. The operator shall cover a well that has been in temporary abandonment for more than two years by a one-well financial assurance, except that the division may waive the requirement of a one-well financial assurance for a well that is shut-in because of the lack of a pipeline connection. The division may release the one-well financial assurance upon the operator's or surety's written request after the well is returned to production if a blanket financial assurance covers the well.

D. Amounts.

(1) A blanket financial assurance shall be in the amount of $50,000 covering all oil, gas or service wells drilled, acquired or operated in this state by the principal on the bond.

(2) A one-well financial assurance shall be in the amounts stated below in accordance with the well's depth and location.

(a) Chaves, Eddy, Lea, McKinley, Rio Arriba, Roosevelt, Sandoval and San Juan counties, New Mexico: $5000 plus $1 per foot of projected depth of proposed well or measured depth of existing well.

(b) All other counties in the state: $10,000 plus $1 per foot of projected depth of proposed well or measured depth of existing well.

(3) The appropriate division district office may approve revised plans for an actively drilling well for drilling as much as 500 feet deeper than the depth stated on the well's financial assurance. A well to be drilled more than 500 feet deeper than the depth stated on the well's financial assurance shall be covered by a new financial assurance in the amount prescribed for the new projected depth.

(4) The amount of the one-well financial assurance required for an intentionally deviated well shall be determined by the well's measured depth, and not its true vertical depth.
[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

19.15.8.10 ADDITIONAL REQUIREMENTS FOR CASH AND SURETY BONDS:

A. Surety bonds shall be issued by a reputable corporate surety authorized to do business in the state.

B. The operator shall deposit cash representing the full amount of the bond in an account in a federally-insured financial institution located within the state, such account to be held in trust for the division. Authorized representatives of the operator and the depository institution shall execute a document evidencing the cash bond's terms and conditions. The operator shall file the document with the division prior to the bond's effective date. If the operator's financial status or reliability is unknown to the director, the director may require the filing of a financial statement or such other information as may be necessary to evaluate the operator's ability to fulfill the bond's conditions. From time to time, any accrued interest over and above the bond's face amount may be paid to the operator.
[19.15.8.10 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

19.15.8.11 ADDITIONAL REQUIREMENTS FOR LETTERS OF CREDIT:

A. The division may accept irrevocable letters of credit issued by national or state-chartered banking associations.

B. Letters of credit shall be irrevocable for a term of not less than five years, unless the applicant shows good cause for a shorter time period.

C. Letters of credit shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least 30 days prior to expiration.

D. The division may forfeit and collect a letter of credit if not replaced by an approved financial assurance at least 30 days before the expiration date.
[19.15.8.11 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

19.15.8.12 RELEASE OF FINANCIAL ASSURANCE:

A. The division shall release a financial assurance document upon the operator's or surety's written request if all wells drilled or acquired under that financial assurance have been plugged and abandoned and the location restored and remediated and released pursuant to 19.15.25.9 NMAC through 19.15.25.11 NMAC, or have been covered by another financial assurance the division has approved.

B. Transfer of a property or a change of operator does not of itself release a financial assurance. The division shall not approve a request for change of operator for a well until the new operator has the required financial assurance in place.
[19.15.8.12 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

19.15.8.13 FORFEITURE OF FINANCIAL ASSURANCE:

A. Upon the operator's failure to properly plug and abandon and restore and remediate the location of a well or wells a financial assurance covers, the division shall give notice to the operator and surety, if applicable, and hold a hearing as to whether the well or wells should be plugged and abandoned and the location restored and remediated in accordance with a division-approved plugging program. If it is determined at the hearing that the operator has failed to plug and abandon the well and restore and remediate the location as provided for in the financial assurance or division rules, the director shall issue an order directing the well to be plugged or abandoned and the location restored and remediated in a time certain. Such an order

may also direct the forfeiture of the financial assurance upon the failure or refusal of the operator, surety or other responsible party to properly plug and abandon the well and restore and remediate the location.

B. If the financial assurance's proceeds exceed the costs the division incurred plugging and abandoning the well and restoring and remediating the location the financial assurance covers, the division shall return the excess to the surety or the operator, as appropriate.

C. If the financial assurance's proceeds are not sufficient to cover all the costs the division incurred in plugging and abandoning the well and restoring and remediating the location, the division may seek indemnification from the operator as provided in NMSA 1978, Section 70-2-14(E).

D. The division shall deposit forfeitures and funds collected pursuant to a judgment in a suit for indemnification in the oil and gas reclamation fund.
[19.15.9.13 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

19.15.8.14 EFFECTIVE DATES.

A. 19.15.8 NMAC applies to wells drilled or acquired after December 15, 2005.

B. As to all other wells, 19.15.8 NMAC is effective January 1, 2008.
[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/08]

HISTORY of 19.15.8 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/08.

NMAC History:
That applicable portion of 19.15.3 NMAC, Drilling (Section 101) (filed 10/29/2001) was replaced by 19.15.8 NMAC, Financial Assurance, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 9 WELL OPERATOR PROVISIONS

19.15.9.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.9.1 NMAC - N, 12/1/08]

19.15.9.2 SCOPE: 19.15.9 NMAC applies to persons or entities operating oil or gas wells within New Mexico.
[19.15.9.2 NMAC - N, 12/1/08]

19.15.9.3 STATUTORY AUTHORITY: 19.15.9 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.9.3 NMAC - N, 12/1/08]

19.15.9.4 DURATION: Permanent.
[19.15.9.4 NMAC - N, 12/1/08]

19.15.9.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.9.5 NMAC - N, 12/1/08]

19.15.9.6 OBJECTIVE: To require an operator of a well or wells to register with the division prior to commencing operations and to require the reporting of a change of operator or a change of name to the division.
[19.15.9.6 NMAC - N, 12/1/08]

19.15.9.7 DEFINITIONS: [RESERVED]
[See 19.15.2 NMAC for definitions.]
[19.15.9.7 NMAC - N, 12/1/08]

19.15.9.8 OPERATOR REGISTRATION:

A. Prior to commencing operations, an operator of a well or wells in New Mexico shall register with the division as an operator. Applicants shall provide the following to the financial assurance administrator in the division's Santa Fe office:

(1) an oil and gas registration identification (OGRID) number obtained from the division, the state land office or the taxation and revenue department;

(2) a current address of record to be used for notice and a current emergency contact name and telephone number for each district in which the operator operates wells; and

(3) the financial assurance 19.15.8 NMAC requires.

B. The division may deny registration as an operator if:

(1) the applicant is not in compliance with Subsection A of 19.15.5.9 NMAC;

(2) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(3) the applicant is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(4) the applicant is a corporation or limited liability company and is not registered with the public regulation commission to do business in New Mexico; or

(5) the applicant is a limited partnership and is not registered with the New Mexico secretary of state to do business in New Mexico.

C. An operator shall inform the division of its current address of record and emergency contact names and telephone numbers by submitting changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

D. The division may require an operator or applicant to identify its current and past officers, directors and partners and its current and past ownership interest in other operators.
[19.15.9.8 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.9 CHANGE OF OPERATOR:

A. A change of operator occurs when the entity responsible for a well or a group of wells changes. A change of operator may result from a sale, assignment by a court, a change in operating agreement or other transaction. Under a change of operator, wells are moved from the OGRID number of the operator of record with the division to the new operator's OGRID number.

B. The operator of record with the division and the new operator shall apply for a change of operator by jointly filing a form C-145 using the division's web-based online application. If the operator of record with the division is unavailable, the new operator shall apply to the division for approval of change of operator without a joint application. The operator shall make such application in writing and provide documentary evidence of the applicant's right to assume operations. The new operator shall not commence operations until the division approves the application for change of operator.

C. The director or the director's designee may deny a change of operator if:

(1) the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC; or

(2) the new operator is acquiring wells, facilities or sites subject to a compliance order requiring remediation or abatement of contamination, or compliance with

19.15.25.8 NMAC, and the new operator has not entered into an agreed compliance order setting a schedule for compliance with the existing order.

D. In determining whether to grant or deny a change of operator when the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having more than the allowed number of wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having more than the allowed number of wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

[19.15.9.9 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.10 CHANGE OF NAME:

A. A change of operator name occurs when the name of the entity responsible for a well or wells changes but the entity does not change. For a change of name, the OGRID number remains the same, but division records are changed to reflect the new operator name.

B. An operator shall apply for a change of name by filing a form C-146 using the division's web-based online application and supplying documentary proof that the change is a name change and not a change of operator. If the operator is a corporation, limited liability company or limited partnership, the name must be registered with the public regulation commission or the New Mexico secretary of state, as applicable. The division shall not approve a change of name until the state land office and the taxation and revenue department have cleared the change of name on the OGRID.

[19.15.9.10 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.11 EXAMPLES OF CHANGE OF OPERATOR AND CHANGE OF NAME:

A. Mr. Smith, a sole proprietor, operates five wells under the name "Smith oil company". Mr. Smith changes the name of his company to "Smith production company". The name of the entity operating the wells has changed, but the entity has not changed. Mr. Smith should apply for a change of name.

B. Mr. Smith incorporates his business, changing from the sole proprietorship, "Smith production company", to a corporation: "Smith production company, inc.". The entity responsible for the wells has changed, and Mr. Smith and "Smith production company, inc." should apply for a change of operator.

C. Smith production company, inc., a New Mexico operator, merges with XYZ, inc., which does not operate in New Mexico. At the surviving entity's election, this transaction may be treated as a change of name from Smith production company, to XYZ, inc., maintaining the existing OGRID, or as a change of operator, with a new OGRID.

D. Two New Mexico operators, Smith production company, inc. and Jones production company, inc., merge. The surviving corporation is Jones production company, inc. A different entity now operates the wells Smith production company, formerly operated, and the wells must be placed under that entity's OGRID. Jones production company, inc. and Smith production company, inc. should apply for a change of operator as to the wells Smith production company, inc. operated.

[19.15.9.11 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

HISTORY of 19.15.9 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/08.

NMAC History:

That applicable portion of 19.15.3 NMAC, Drilling (Section 100) (filed 11/30/2005) was replaced by 19.15.9 NMAC, Well Operator Provisions, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 10 SAFETY

19.15.10.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.10.1 NMAC - N, 12/1/08]

19.15.10.2 SCOPE: 19.15.10 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico.

[19.15.10.2 NMAC - N, 12/1/08]

19.15.10.3 STATUTORY AUTHORITY: 19.15.10 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.

[19.15.10.3 NMAC - N, 12/1/08]

19.15.10.4 DURATION: Permanent.

[19.15.10.4 NMAC - N, 12/1/08]

19.15.10.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.

[19.15.10.5 NMAC - N, 12/1/08]

19.15.10.6 OBJECTIVE: To establish safety procedures for drilling and production of oil and gas wells.

[19.15.10.6 NMAC - N, 12/1/08]

19.15.10.7 DEFINITIONS: [RESERVED]

[See 19.15.2.7 NMAC for definitions.]

[19.15.10.7 NMAC - N, 12/1/08]

19.15.10.8 SAFETY PROCEDURES FOR DRILLING AND PRODUCTION:

A. An operator shall:

(1) clean oil wells into a pit permitted pursuant to 19.15.17 NMAC or a tank, not less than 40 feet from the derrick floor and 150 feet from a fire hazard;

(2) produce flowing oil wells through an oil and gas separator of ample capacity and in good working order;

(3) not place or leave a boiler or portable electric lighting generator nearer than 150 feet to a producing well or oil tank; and

(4) remove rubbish or debris that might constitute a fire hazard to a distance of at least 150 feet from the vicinity of wells and tanks and burn or dispose of waste in a manner as to avoid creating a fire hazard.

B. When coming out of the hole with drill pipe, the operator shall circulate drilling fluid until equalized and subsequently maintain drilling fluid level at a height sufficient to control bottom hole pressures. During course of drilling, the operator shall test blowout preventers at least once each 24-hour period.

[19.15.10.8 NMAC - Rp, 19.15.3.114 NMAC, 12/1/08]

HISTORY of 19.15.10 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/08.

NMAC History:

That applicable portion of 19.15.3 NMAC, Drilling (Section 114) (filed 10/29/2001) was replaced by 19.15.10 NMAC, Safety, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 11 HYDROGEN SULFIDE GAS

19.15.11.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.11.1 NMAC - N, 12/1/08]

19.15.11.2 SCOPE: 19.15.11 NMAC applies to a person subject to the division's jurisdiction, including a person engaged in drilling, stimulating, injecting into, completing, working over or producing an oil, gas or carbon dioxide well or a person engaged in gathering, transporting, storing, processing or refining of oil, gas or carbon dioxide. 19.15.11 NMAC does not exempt or otherwise excuse surface waste management facilities the division permits pursuant to 19.15.36 NMAC from more stringent conditions on the handling of hydrogen sulfide required of such facilities by 19.15.36 NMAC or more stringent conditions in permits issued pursuant to 19.15.36 NMAC, nor shall the facilities be exempt or otherwise excused from the requirements set forth in 19.15.11 NMAC by virtue of permitting under 19.15.36 NMAC.
[19.15.11.2 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.3 STATUTORY AUTHORITY: 19.15.11 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.11.3 NMAC - N, 12/1/08]

19.15.11.4 DURATION: Permanent.
[19.15.11.4 NMAC - N, 12/1/08]

19.15.11.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.11.5 NMAC - N, 12/1/08]

19.15.11.6 OBJECTIVE: To require oil and gas operations be conducted in a manner that protects the public from exposure to hydrogen sulfide gas.
[19.15.11.6 NMAC - N, 12/1/08]

19.15.11.7 DEFINITIONS:

A. "ANSI" means the American national standards institute.

B. "Area of exposure" means the area within a circle constructed with a point of escape at its center and the radius of exposure as its radius.

C. "Dispersion technique" is a mathematical representation of the physical and chemical transportation characteristics, dilution characteristics and transformation characteristics of hydrogen sulfide gas in the atmosphere.

D. "Escape rate" means the maximum volume (Q) that is used to designate the possible rate of escape of a gaseous mixture containing hydrogen sulfide, as set forth in 19.15.11 NMAC.

(1) For existing gas facilities or operations, the escape rate is calculated using the maximum daily rate of the gaseous mixture produced or handled or the best estimate thereof. For an existing gas well, the escape rate is calculated using the current daily absolute open flow rate against atmospheric pressure or the best estimate of that rate.

(2) For new gas operations or facilities, the escape rate is calculated as the maximum anticipated flow rate through the system. For a new gas well, the escape rate is calculated using the maximum open-flow rate of offset wells in the pool or reservoir, or the pool or reservoir average of maximum open-flow rates.

(3) For existing oil wells, the escape rate is calculated by multiplying the producing gas/oil ratio by the maximum daily production rate or the best estimate of the maximum daily production rate.

(4) For new oil wells, the escape rate is calculated by multiplying the producing gas/oil ratio by the maximum daily production rate of offset wells in the pool or reservoir, or the pool or reservoir average of the producing gas/oil ratio multiplied by the maximum daily production rate.

(5) For facilities or operations not mentioned, the escape rate is calculated using the actual flow of the gaseous mixture through the system or the best estimate of the actual flow of the gaseous mixture through the system.

E. "GPA" means the gas processors association.

F. "LEPC" means the local emergency planning committee established pursuant to the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. section 11001.

G. "NACE" means the national association of corrosion engineers.

H. "Potentially hazardous volume" means the volume of hydrogen sulfide gas of such concentration that:

(1) the 100-ppm radius of exposure includes a public area;

(2) the 500-ppm radius of exposure includes a public road; or

(3) the 100-ppm radius of exposure exceeds 3000 feet.

I. "Public area" means a building or structure that is not associated with the well, facility or operation for which the radius of exposure is being calculated and that is used as a dwelling, office, place of business, church, school, hospital or government building, or a portion of a park, city, town, village or designated school bus stop or other similar area where members of the public may reasonably be expected to be present.

J. "Public road" means a federal, state, municipal or county road or highway.

K. "Radius of exposure" means the radius constructed with the point of escape as its starting point and its length calculated using the following Pasquill-Gifford derived equation, or by such other method as the division may approve:

(1) for determining the 100-ppm radius of exposure: $X = [(1.589)(\text{hydrogen sulfide concentration})(Q)]^{(0.6258)}$, where "X" is the radius of exposure in feet, the "hydrogen sulfide concentration" is the decimal equivalent of the mole or volume fraction of hydrogen sulfide in the gaseous mixture and "Q" is the escape rate expressed in cubic feet per day (corrected for standard conditions of 14.73 psi absolute and 60 degrees fahrenheit);

(2) for determining the 500-ppm radius of exposure: $X = [(0.4546)(\text{hydrogen sulfide concentration})(Q)]^{(0.6258)}$, where "X" is the radius of exposure in feet, the "hydrogen sulfide concentration" is the decimal equivalent of the mole or volume fraction of hydrogen sulfide in the gaseous mixture and "Q" is the escape rate expressed in cubic feet per day (corrected for standard conditions of 14.73 psi absolute and 60 degrees fahrenheit);

(3) for a well being drilled, completed, recompleted, worked over or serviced in an area where insufficient data exists to calculate a radius of exposure but where hydrogen sulfide could reasonably be expected to be present in concentrations in excess of 100 ppm in the gaseous mixture, a 100-ppm radius of exposure equal to 3000 feet is assumed.
[19.15.11.7 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.8 REGULATORY THRESHOLD:

A. Determination of hydrogen sulfide concentration.

(1) Each person shall determine the hydrogen sulfide concentration in the gaseous mixture within wells, facilities or operations either by testing (using a sample from each well, facility or operation); testing a representative sample; or using process knowledge in lieu of testing. If the person uses a representative sample or process knowledge, the concentration derived from the representative sample or process knowledge shall be reasonably representative of the hydrogen sulfide concentration within the well, facility or operation.

(2) The person shall conduct the tests used to make the determination referred to in Paragraph (1) of Subsection A of 19.15.11.8 NMAC in accordance with applicable ASTM or GPA standards or by another division-approved method.

(3) If the person conducted a test prior to January 31, 2003 that otherwise meets the requirements of Paragraphs (1) and (2) of Subsection A of 19.15.11.8 NMAC, new testing is not required.

(4) If a change or alteration may materially increase the hydrogen sulfide concentration in a well, facility or operation, the person shall make a new determination in accordance with 19.15.11 NMAC.

B. Concentrations determined to be below 100 ppm. If the hydrogen sulfide concentration in a given well, facility or operation is less than 100 ppm, the person is not required to take further actions pursuant to 19.15.11 NMAC.

C. Concentrations determined to be above 100 ppm.

(1) If the person determines the hydrogen sulfide concentration in a given well, facility or operation is 100 ppm or greater, then the person shall calculate the radius of exposure and comply with applicable requirements of 19.15.11 NMAC.

(2) If calculation of the radius of exposure reveals that a potentially hazardous volume is present, the person shall provide results of the hydrogen sulfide concentration determination and the calculation of the radius of exposure to the division. For a well, facility or operation, the person shall accomplish the determination, calculation and submission 19.15.11.8 NMAC requires before operations begin.

D. Recalculation. The person shall calculate the radius of exposure if the hydrogen sulfide concentration in a well, facility or operation increases to 100 ppm or greater. The person shall also recalculate the radius of exposure if the actual volume fraction of hydrogen sulfide increases by a factor of 25 percent in a well, facility or operation that previously had a hydrogen sulfide concentration of 100 ppm or greater. If calculation or recalculation of the radius of exposure reveals that a potentially hazardous volume is present, the person shall provide the results to the division within 60 days.

[19.15.11.8 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.9 HYDROGEN SULFIDE CONTINGENCY PLAN:

A. When required. If a well, facility or operation involves a potentially hazardous volume of hydrogen sulfide, the person shall develop a hydrogen sulfide contingency plan that the person will use to alert and protect the public in accordance with the Subsections B through I of 19.15.11.9 NMAC.

B. Plan contents.

(1) API guidelines. The person shall develop the hydrogen sulfide contingency plan with due consideration of paragraph 7.6 of the guidelines in the API publication Recommended Practices for Oil and Gas Producing and Gas Processing Plant Operations Involving Hydrogen Sulfide, RP-55, most recent edition, or with due consideration to another division-approved standard.

(2) Required contents. The hydrogen sulfide contingency plan shall contain information on the following subjects, as appropriate to the well, facility or operation to which it applies.

(a) Emergency procedures. The hydrogen sulfide contingency plan shall contain information on emergency procedures the person will follow in the event of a release and shall include, at a minimum, information concerning the responsibilities and duties of personnel during the emergency, an immediate action plan as described in the API document referenced in Paragraph (1) of Subsection B of 19.15.11.9 NMAC, and telephone numbers of emergency responders, public agencies, local government and other appropriate public authorities. The plan shall also include the locations of potentially affected public areas and public roads and shall describe proposed evacuation routes, locations of road blocks and procedures for notifying the public, either through direct telephone notification using telephone number lists or by means of mass notification and reaction plans. The plan shall include information on the availability and location of necessary safety equipment and supplies.

(b) Characteristics of hydrogen sulfide and sulfur dioxide. The hydrogen sulfide contingency plan shall include a discussion of the characteristics of hydrogen sulfide and sulfur dioxide.

(c) Maps and drawings. The hydrogen sulfide contingency plan shall include maps and drawings that depict the area of exposure and public areas and public roads within the area of exposure.

(d) Training and drills. The hydrogen sulfide contingency plan shall provide for training and drills, including training in the responsibilities and duties of essential personnel and periodic on-site or classroom drills or exercises that simulate a release, and shall describe how the person will document the training, drills and attendance. The hydrogen sulfide contingency plan shall also provide for training of residents as appropriate on the proper protective measures to be taken in the event of a release, and shall provide for briefing of public officials on issues such as evacuation or shelter-in-place plans.

(e) Coordination with state emergency plans. The hydrogen sulfide contingency plan shall describe how the person will coordinate emergency response actions under the plan with the division and the New Mexico state police consistent with the New Mexico hazardous materials emergency response plan.

(f) Activation levels. The hydrogen sulfide contingency plan shall include the activation level and a description of events that could lead to a release of hydrogen sulfide sufficient to create a concentration in excess of the activation level.

C. Plan activation. The person shall activate the hydrogen sulfide contingency plan when a release creates a hydrogen sulfide concentration greater than the activation level set forth in the hydrogen sulfide contingency plan. At a minimum, the person shall activate the plan whenever a release may create a hydrogen sulfide concentration of more than 100 ppm in a public area, 500 ppm at a public road or 100 ppm 3000 feet from the site of release.

D. Submission.

(1) Where submitted. The person shall submit the hydrogen sulfide contingency plan to the division.

(2) When submitted. The person shall submit a hydrogen sulfide contingency plan for a new well, facility or operation before operations commence. The hydrogen sulfide contingency plan for a drilling, completion, workover or well servicing operation shall be on file with the division before operations commence and may be submitted separately or along with the APD or may be on file from a previous submission. A person shall submit a hydrogen sulfide contingency plan within 180 days after the person becomes aware or should have become aware that a public area or public road is established that creates a potentially hazardous volume where none previously existed.

(3) Electronic submission. A filer who operates more than 100 wells or who operates an oil pump station, compressor station, refinery or gas plant shall submit each hydrogen sulfide contingency plan in electronic format. The file may submit the hydrogen sulfide contingency plan through

electronic mail, through an Internet filing or by delivering electronic media to the division, so long as the electronic submission is compatible with the division's systems.

E. Failure to submit plan. A person's failure to submit a hydrogen sulfide contingency plan when required may result in denial of an application for permit to drill, cancellation of an allowable for the subject well or other enforcement action appropriate to the well, facility or operation.

F. Review, amendment. The person shall review the hydrogen sulfide contingency plan any time a subject addressed in the plan materially changes and make appropriate amendments. If the division determines that a hydrogen sulfide contingency plan is inadequate to protect public safety, the division may require the person to add provisions to the plan or amend the plan as necessary to protect public safety.

G. Retention and inspection. The hydrogen sulfide contingency plan shall be reasonably accessible in the event of a release, maintained on file at all times and available for division inspection.

H. Annual inventory of contingency plans. On an annual basis, each person required to prepare one or more hydrogen sulfide contingency plans pursuant to 19.15.11 NMAC shall file with the appropriate local emergency planning committee and the state emergency response commission an inventory of the wells, facilities and operations for which plans are on file with the division and the name, address and telephone number of a point of contact.

I. Plans required by other jurisdictions. The person may submit a hydrogen sulfide contingency plan the BLM or other jurisdiction require that meets the requirements of 19.15.11.9 NMAC to the division in satisfaction of 19.15.11.9 NMAC.

[19.15.11.9 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.10 SIGNS, MARKERS: For each well, facility or operation involving a hydrogen sulfide concentration of 100 ppm or greater, the person shall install and maintain signs or markers that conform with the current ANSI standard Z535.1-2002 (Safety Color Code), or some other division-approved standard. The sign or marker shall be readily readable, and shall contain the words "poison gas" and other information sufficient to warn the public that a potential danger exists. The person shall prominently post signs or markers at locations, including entrance points and road crossings, sufficient to alert the public that a potential danger exists.

[19.15.11.10 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.11 PROTECTION FROM HYDROGEN SULFIDE DURING DRILLING, COMPLETION, WORKOVER AND WELL SERVICING OPERATIONS:

A. API standards. The person shall conduct drilling, completion, workover and well servicing operations involving a hydrogen sulfide concentration of 100 ppm or greater with due consideration to the guidelines in the API publications Recommended Practice for Oil and Gas Well Servicing and Workover Operations Involving Hydrogen Sulfide, RP-68, and Recommended Practices for Drilling and Well Servicing Operations Involving Hydrogen Sulfide, RP-49, most recent editions, or some other division-approved standard.

B. Detection and monitoring equipment. Drilling, completion, workover and well servicing operations involving a hydrogen sulfide concentration of 100 ppm or greater shall include hydrogen sulfide detection and monitoring equipment as follows.

(1) Each drilling and completion site shall have an accurate and precise hydrogen sulfide detection and monitoring system that automatically activates visible and audible alarms when the hydrogen sulfide's ambient air concentration reaches a predetermined value the operator sets, not to exceed 20 ppm. The operator shall locate a sensing point at the shale shaker, rig floor and bell nipple for a drilling site and the cellar, rig floor and circulating tanks or shale shaker for a completion site.

(2) For workover and well servicing operations, the person shall locate one operational sensing point as close to the well bore as practical. Additional sensing points may be necessary for large or long-term operations.

(3) The operator shall provide and maintain as operational hydrogen sulfide detection and monitoring equipment during drilling when drilling is within 500 feet of a zone anticipated to contain hydrogen sulfide and continuously thereafter through all subsequent drilling.

C. Wind indicators. Drilling, completion, workover and well servicing operations involving a hydrogen sulfide concentration of 100 ppm or greater shall include wind indicators. The person shall have equipment to indicate wind direction present and visible at all times. The person shall install at least two devices to indicate wind direction at separate elevations that visible from all principal working areas at all times. When a sustained hydrogen sulfide concentration is detected in excess of 20 ppm at a detection point, the person shall display red flags.

D. Flare system. For drilling and completion operations in an area where it is reasonably expected that a potentially hazardous hydrogen sulfide volume will be encountered, the person shall install a flare system to safely gather and burn hydrogen-sulfide-bearing gas. The person shall locate flare outlets at least 150 feet from the well bore. Flare lines shall be as straight as practical. The person shall equip the flare system with a suitable and safe means of ignition. Where noncombustible gas is to be flared, the system shall provide supplemental fuel to maintain ignition.

E. Well control equipment. When the 100 ppm radius of exposure includes a public area, the following well control equipment is required.

(1) Drilling. The person shall install a remote-controlled well control system that is operational at all times beginning when drilling is within 500 vertical feet of the formation believed to contain hydrogen sulfide and continuously thereafter during drilling. The well control system shall include, at a minimum, a pressure and hydrogen-sulfide-rated well control choke and kill system including manifold and blowout preventer that meets or exceeds the specifications in API publications Choke and Kill Systems, 16C and Blowout Prevention Equipment Systems for Drilling Wells, RP 53 or other division-approved specifications. The person shall use mud-gas separators. The person shall test and maintain these systems pursuant to the specifications referenced, according to the requirements of 19.15.11 NMAC, or as the division otherwise approves.

(2) Completion, workover and well servicing. The person shall install a remote controlled pressure and hydrogen-sulfide-rated well control system that meets or exceeds API specifications or other division-approved specifications that is operational at all times during a well's completion, workover and servicing.

F. Mud program. Drilling, completion, workover and well servicing operations involving a hydrogen sulfide concentration of 100 ppm or greater shall use a hydrogen sulfide mud program capable of handling hydrogen sulfide conditions and well control, including degassing.

G. Well testing. Except with prior division approval, a person shall conduct drill-stem testing of a zone that contains hydrogen sulfide in a concentration of 100 ppm or greater only during daylight hours and not permit formation fluids to flow to the surface.

H. If hydrogen sulfide encountered during operations. If hydrogen sulfide was not anticipated at the time the division issued a permit to drill but is

encountered during drilling in a concentration of 100 ppm or greater, the operator shall satisfy the requirements of 19.15.11 NMAC before continuing drilling operations. The operator shall notify the division of the event and the mitigating steps that the operator has or is taking as soon as possible, but no later than 24 hours following discovery. The division may grant verbal approval to continue drilling operations pending preparation of a required hydrogen sulfide contingency plan.
[19.15.11.11 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.12 PROTECTION FROM HYDROGEN SULFIDE AT OIL PUMP STATIONS, PRODUCING WELLS, TANK BATTERIES AND ASSOCIATED PRODUCTION FACILITIES, PIPELINES, REFINERIES, GAS PLANTS AND COMPRESSOR STATIONS:

A. API standards. A person shall conduct operations at oil pump stations and producing wells, tank batteries and associated production facilities, refineries, gas plants and compressor stations involving a hydrogen sulfide concentration of 100 ppm or greater with due consideration to the guidelines in the API publication Recommended Practices for Oil and Gas Producing and Gas Processing Plant Operations Involving Hydrogen Sulfide, RP-55, latest edition or some other division-approved standard.

B. Security. A person shall protect well sites and other unattended, fixed surface facilities involving a hydrogen sulfide concentration of 100 ppm or greater from public access by fencing with locking gates when the location is within 1/4 mile of a public area. For the purposes of Subsection B of 19.15.11.12 NMAC, a surface pipeline is not considered a fixed surface facility.

C. Wind direction indicators. Oil pump stations, producing wells, tank batteries and associated production facilities, pipelines, refineries, gas plants and compressor stations involving a hydrogen sulfide concentration of 100 ppm or greater shall have equipment to indicate wind direction. The person shall install wind direction equipment that is visible from all principal working areas at all times.

D. Control equipment. When the 100 ppm radius of exposure includes a public area, the following additional measures are required.

(1) The person shall install and maintain in good operating condition safety devices, such as automatic shut-down devices, to prevent hydrogen sulfide's escape. Alternatively, the person shall establish safety procedures to achieve the same purpose.

(2) A well shall possess a secondary means of immediate well control through the use of an appropriate christmas tree or downhole completion equipment. The equipment shall allow downhole accessibility (reentry) under pressure for permanent well control.

E. Tanks or vessels. The person shall chain each stair or ladder leading to the top of a tank or vessel containing 300 ppm or more of hydrogen sulfide in the gaseous mixture or mark it to restrict entry.
[19.15.11.12 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.13 PERSONNEL PROTECTION AND TRAINING: The person shall provide persons responsible for implementing a hydrogen sulfide contingency plan training in hydrogen sulfide hazards, detection, personal protection and contingency procedures.
[19.15.11.13 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.14 STANDARDS FOR EQUIPMENT THAT MAY BE EXPOSED TO HYDROGEN SULFIDE: Whenever a well, facility or operation involves a potentially hazardous hydrogen sulfide volume, the person shall select equipment with consideration for both the hydrogen sulfide working environment and anticipated stresses and shall use NACE Standard MR0175 (latest edition) or some other division-approved standard for selection of metallic equipment or, if applicable, use adequate protection by chemical inhibition or other methods that control or limit hydrogen sulfide's corrosive effects.
[19.15.11.14 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.15 EXEMPTIONS: A person may petition the director or the director's designee for an exemption to a requirement of 19.15.11 NMAC. A petition shall provide specific information as to the circumstances that warrant approval of the exemption requested and how the person will protect public safety. The director or the director's designee, after considering all relevant factors, may approve an exemption if the circumstances warrant and so long as the person protects public safety.
[19.15.11.15 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.16 NOTIFICATION OF THE DIVISION: The person shall notify the division upon a release of hydrogen sulfide requiring activation of the hydrogen sulfide contingency plan as soon as possible, but no more than four hours after plan activation, recognizing that a prompt response should supersede notification. The person shall submit a full report of the incident to the division on form C-141 no later than 15 days following the release.
[19.15.11.16 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

HISTORY of 19.15.11 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/08.

NMAC History:
That applicable portion of 19.15.3 NMAC, Drilling (Section 118) (filed 10/29/2001) was replaced by 19.15.11 NMAC, Hydrogen Sulfide Gas, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 12 POOLS

19.15.12.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.12.1 NMAC - N, 12/1/08]

19.15.12.2 SCOPE: 19.15.12 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.12.2 NMAC - N, 12/1/08]

19.15.12.3 STATUTORY AUTHORITY: 19.15.12 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-16 and Section 70-2-17.
[19.15.12.3 NMAC - N, 12/1/08]

19.15.12.4 DURATION: Permanent.
[19.15.12.4 NMAC - N, 12/1/08]

19.15.12.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.12.5 NMAC - N, 12/1/08]

19.15.12.6 OBJECTIVE: To regulate oil and gas operations that involve commingling of oil or gas from different pools or leases, in order to prevent waste and protect correlative rights.
[19.15.12.6 NMAC - N, 12/1/08]

19.15.12.7 DEFINITIONS:

A. "Diverse ownership"

means leases or pools have different working, royalty or overriding royalty interest owners or different ownership percentages of the same working, royalty or overriding royalty interest owners.

B. "Identical ownership" means leases or pools have the same working, royalty and overriding royalty owners in exactly the same percentages.

C. "Lease" means a contiguous geographical area of identical ownership overlying a pool or portion of a pool. An area pooled, unitized or communitized, either by agreement or by division order, or a participating area shall constitute a lease. If there is diversity of ownership between different pools, or between different zones or strata, then each such pool, zone or stratum having diverse ownership shall be considered a separate lease.

[19.15.12.7 NMAC - Rp, 19.15.5.303 NMAC, 12/1/08]

19.15.12.8 CLASSIFYING AND DEFINING POOLS: The division shall determine whether a particular well or pool is a gas or oil well, or a gas or oil pool, and from time to time classify and reclassify wells and name pools accordingly, and shall determine the limits of a pool or pools producing oil or gas and from time to time redetermine such limits.

[19.15.12.8 NMAC - Rp, 19.15.1.15 NMAC, 12/1/08]

19.15.12.9 SEGREGATION OF PRODUCTION FROM DIFFERENT POOLS OR LEASES:

A. Pool segregation required. An operator shall produce each pool as a single common source of supply and complete, case, maintain and operate wells in the pool so as to prevent communication within the well bore with other pools. An operator shall at all times segregate oil or gas produced from each pool. The combination commingling of production, before marketing, with production from other pools without division approval is prohibited.

B. Lease segregation required. An operator shall not transport oil or gas from a lease until it has been accurately measured or determined by other methods acceptable to the division. An operator shall at all times segregate production from each lease. The combination or commingling of production, before marketing, with production from other leases without division approval is prohibited.

C. Exceptions. The division may permit exceptions to Subsections A and B of 19.15.12.9 NMAC for surface commingling, downhole commingling and off-lease storage or measurement pursuant to 19.15.12.10 NMAC, 19.15.12.11 NMAC and 19.15.12.12 NMAC, respectively. Exceptions granted by previous division orders remain in effect in accordance with their terms and conditions.

[19.15.12.9 NMAC - Rp, 19.15.5.303 NMAC, 12/1/08]

19.15.12.10 SURFACE COMMINGLING - OIL, GAS OR OIL AND GAS:

A. To prevent waste, to promote conservation and to protect correlative rights, the division may grant exceptions to permit the surface commingling of oil or gas in common facilities from two or more pools, two or more leases or combinations of pools and leases provided that:

(1) the division shall approve the method the applicant uses to allocate the production to the various leases or pools to be commingled;

(2) if state, federal or tribal lands are involved, the operator has notified the state land office or BLM, as applicable, of the proposed commingling; and

(3) the operator has met the other applicable requirements in 19.15.12.10 NMAC.

B. Specific requirements and provisions for commingling of leases, pools or leases and pools with identical ownership.

(1) Measurement and allocation methods.

(a) Well test method. If all wells or units to be commingled are marginal and are physically incapable of producing the top proration unit allowable for their respective pools, or if all affected pools are unprorated, the division shall permit commingling without separately measuring the production from each pool or lease. Instead, the operator may determine the production from each well and from each pool or lease from well tests conducted periodically, but no less than annually. The well test method shall not apply to wells or units that can produce an amount of oil equal to the top proration unit allowable for the pool but are restricted because of high gas-oil ratios. The operator of a marginal commingling installation shall notify the division any time a well or unit commingled under 19.15.12.10 NMAC becomes capable of producing the top proration unit allowable for its pool, at which time the division shall require separate measurement.

(b) Metering method. The operator may determine production from each pool or lease by separately metering before commingling.

(c) Subtraction method. If production from all except one of the pools or leases to be commingled is separately measured, the operator may determine the production from the remaining pool or lease by the subtraction method as follows:

(i) for oil, the net production from the unmetered pool or lease shall be the difference between the net pipeline runs with the beginning and ending stock adjustments and the sum of the net production of the metered pools or leases;

(ii) for gas, the net production from the unmetered pool or lease shall be the difference between the volume recorded at the sales meter and the sum of the volumes recorded at the individual pool or lease meters.

(d) Top allowable producers. If a well or unit in a prorated pool to be commingled can physically be produced at top proration unit allowable rates (even if restricted because of high gas-oil ratios), the division may permit commingling only if the operator or a gatherer, transporter or processor meters the production from the unit prior to commingling, or determines it by the subtraction method.

(e) Alternative methods. An operator may determine production from each pool or lease to be commingled by other methods the division has specifically approved prior to commingling. The division shall determine what evidence is necessary to support a request to use an alternative method.

(2) Prior to commingling, the applicant shall notify the division by filing form C-103 in the division's Santa Fe office with the following information set forth in the form or attached to the form:

(a) identification of each of the leases, pools or leases and pools to be commingled;

(b) the method of allocation the applicant will use; if the applicant proposes using the well test method for production from a prorated pool, the notification to the division shall be accompanied by a tabulation of production showing that the average daily production of an affected proration unit over a 60-day period has been below the top proration unit allowable for the subject pool (or for a newly drilled well without a 60-day production history, a tabulation of the available production) or other evidence acceptable to the division to establish that the well or wells on the unit are not capable of producing the top proration unit allowable; if the proposed allocation method is other than an approved method provided in Subsection B of 19.15.12.10 NMAC, the operator shall submit evidence of the method's reliability;

(c) a certification by a licensed attorney or qualified petroleum landman that the ownership in the pools and leases to be commingled is identical as defined in 19.15.12.7 NMAC; and

(d) evidence of notice to the state land office or the BLM, if required.

(3) Approval. The division may authorize commingling without a notice or hearing and the operator may commence commingling upon the division's approval of form C-103, subject to compliance with any conditions of the approval the division noted, provided that the operator shall not commence commingling involving state, federal or tribal leases unless or until approved by the state land office or the BLM, as applicable.

C. Specific requirements and provisions for commingling of leases, pools or leases and pools with diverse ownership.

(1) Measurement and allocation methods. Where there is diversity of ownership between two or more leases, two or more pools or between different pools and leases, the division shall only permit surface commingling of production from the leases and pools if the operator accurately meters production from each of such pools or leases or determines the production by other methods the division has specifically approved prior to commingling.

(2) Meter proving and calibration frequencies.

(a) Oil. The operator shall test each meter used in oil production accounting for accuracy as follows: monthly, if more than 100,000 barrels of oil per month are measured through the meter; quarterly, if between 10,000 and 100,000 barrels of oil per month are measured through the meter; and semi-annually, if less than 10,000 barrels of oil per month are measured through the meter.

(b) Gas. For each gas sales and allocation meter, the operator shall test the metering equipment's accuracy at the point of delivery or allocation following the initial installation and following repair and retested: quarterly, if 100 MCFGPD or more are measured through the meter; and semi-annually, if less than 100 MCFGPD are measured through the meter.

(c) Correction and adjustment. If a meter proving and calibration test reveals inaccuracy in the metering equipment of more than two percent, the operator shall correct the volume measured and adjust the meter to zero error. The operator shall submit a corrected report adjusting the volume of oil or gas measured and showing the calculations made in correcting the volumes. The operator shall correct the volumes back to the time the inaccuracy occurred, if known. If the time is unknown, the operator shall correct the volumes for the last half of the period elapsed since the last calibration date. If a test reveals an inaccuracy of less than two percent, the operator shall adjust the meter, but correction of prior production is not required.

(3) Low production gas wells. For gas wells producing less than 15 MCFGPD, the operator may estimate production as an acceptable alternative to individual well measurement provided that commingling of production from different pools or leases does not take place unless otherwise authorized pursuant to 19.15.12 NMAC.

(4) Approval process.

(a) In general. Where there is diversity of ownership, the division may grant an exception to the requirements of 19.15.12.9 NMAC to permit surface commingling of production from different leases, pools or leases and pools only after notice and an opportunity for hearing as provided in Paragraph (4) of Subsection C of 19.15.12.10 NMAC.

(b) Application. The operator shall submit an application for administrative approval to the division's Santa Fe office on form C-107-B, which shall contain a list of the parties (interest owners) owning an interest in the production to be commingled (including owners of royalty and overriding royalty interests whether or not they have a right or option to take their interests in kind) and a method of allocating production to ensure the protection of correlative rights.

(c) Notice. The applicant shall notify the interest owners in accordance with 19.15.4.12 NMAC. The applicant shall submit a statement attesting that the applicant, on or before the date the applicant submitted the application to the division, notified each of the interest owners by sending them a copy of the application and the attachments to the application, by certified mail, return receipt requested, and advising them that they must file any objection in writing with the division's Santa Fe office within 20 days from the date the division received the application. The division may approve the application administratively, without hearing, upon receipt of written waivers from interest owners, or if no interest owner has filed an objection within the 20-day period. If the division receives an objection, it shall set the application for hearing. The division shall notify the applicant, who shall give formal notice of the hearing to each party who has filed an objection and to such other persons as the division directs.

(d) Hearing ordered by the division. The division may set for hearing an application for administrative approval of surface commingling, and, in such case, the applicant shall give notice of the hearing in the manner the division directs.

(e) Notice by publication. When an applicant is unable to locate all interest owners after exercising reasonable diligence, the applicant shall provide notice by publication and submit proof of publication with the application. Such proof shall consist of a copy of the legal advertisement that was published in a newspaper of general circulation in the county or counties in which the commingled production is located. The advertisement shall include:

(i) the applicant's name, address, telephone number and contact party;

(ii) the location by section, township and range of the leases from which production will be commingled and the location of the commingling facility;

(iii) the source of all commingled production by pool name; and

(iv) a notation that interested parties must file objections or requests for hearing in writing with the division's Santa Fe office within 20 days after publication, or the division may approve the application.

(f) Effect of protest. The division shall include protests and requests for hearing it receives in the case file; provided however, the division shall not consider the protest as evidence. If the protesting party does not appear at the hearing, the division may grant application without receiving additional evidence in support of the application.

(g) Additions. A surface commingling order may authorize, prospectively, the inclusion of additional pools or leases within defined parameters set forth in the order, provided that:

(i) the notice to the interest owners includes a statement that authorization for subsequent additions is being sought and of the parameters for the additions the applicant proposes, and

(ii) the division finds that subsequent additions within defined parameters will not, in reasonable probability, reduce the commingled production's value or otherwise adversely affect the interest owners; a subsequent application to amend an order to add to the commingled production other leases, pools or leases and pools that are within the defined parameters requires notice only to the owners of interests in the production to be added, unless the division otherwise directs.

(h) State, federal or tribal lands. Notwithstanding the issuance of an exception under 19.15.12.10 NMAC, an operator shall not commence commingling involving state, federal or tribal leases unless or until approved by the state land office or the BLM, as applicable.

[19.15.12.10 NMAC - Rp, 19.15.5.303 NMAC, 12/1/08]

19.15.12.11 DOWNHOLE COMMINGLING:

A. The director may grant an exception to 19.15.12.9 NMAC to permit the commingling of multiple producing pools in existing or proposed well bores when the following conditions are met.

(1) The fluids from each pool are compatible and combining the fluids will not damage the pools.

(2) The commingling will not jeopardize the efficiency of present or future secondary recovery operations in the pools to be commingled.

(3) The bottom perforation of the lower zone is within 150 percent of the depth of the top perforation in the upper zone and the lower zone is at or below normal pressure with normal pressure assumed to be 0.433 psi per foot of depth. If the pools to be commingled are not within this vertical interval, then evidence is required to demonstrate that commingling will not result in shut-in or flowing well bore pressures in excess of any commingled pool's fracture parting pressure. The fracture parting pressure is assumed to be 0.65 psi per foot of depth unless the applicant submits other measured or calculated pressure data acceptable to the division.

(4) The commingling will not result in the permanent loss of reserves due to cross-flow in the well bore.

(5) Fluid-sensitive formations that may be subject to damage from water or other produced liquids are protected from contact with the liquids produced from other pools in the well.

(6) If any of the pools being commingled is prorated, or the well's production has been restricted by division order in any manner, the allocated production from each producing pool in the commingled well bore shall not exceed the top oil or gas allowable rate for a well in that pool or rate restriction applicable to the well.

(7) The commingling will not reduce the value of the total remaining production.

(8) Correlative rights will not be violated.

B. The director may rescind authority to commingle production in a well bore and require the operator produce the pools separately if, in the director's opinion, waste or reservoir damage is resulting, correlative rights are being impaired or the efficiency of a secondary recovery project is being impaired, or any changes or conditions render the installation no longer eligible for downhole commingling.

C. When the conditions set forth in Subsection A of 19.15.12.11 NMAC are satisfied, the director may approve a request to downhole commingle production in one of the following ways.

(1) Individual exceptions. An operator shall file applications to downhole commingle in well bores located outside of an area subject to a downhole commingling order issued in a "reference case" and not within a pre-approved pool or area on form C-107-A with the division.

(a) The director may administratively approve a form C-107-A in the absence of a valid objection filed within 20 days after the division's receipt of the application if, in the director's opinion, waste will not occur and correlative rights will not be impaired.

(b) In those instances where the ownership or percentages between the pools to be commingled is not identical, applicant shall send a copy of form C-107-A to interest owners in the spacing unit by certified mail, return receipt requested.

(c) The applicant shall send copies of form C-107-A to the state land office for wells in spacing units containing state lands or the BLM for wells in spacing units containing federal or tribal lands.

(d) The director may set an administratively filed form C-107-A for hearing.

(2) Exceptions for wells located in pre-approved pools or areas. Applicants shall file applications to downhole commingle in well bores within pools or areas that have been established by the division as "pre-approved pools or areas" pursuant to Paragraph (2) of Subsection D of 19.15.12.11 NMAC on form C-103 at the appropriate division district office. The district supervisor of the appropriate division district office may approve the proposed downhole commingling following receipt of form C-103. In addition to the information required by form C-103, the applicant shall include:

(a) the number of the division order that established pre-approved pool or area;

(b) the names of pools to be commingled;

(c) perforated intervals;

(d) allocation method and supporting data;

(e) a statement that the commingling will not reduce the total remaining production's value;

(f) in those instances where the ownership or percentages between the pools to be commingled is not identical, a statement attesting that applicant sent notice to the interest owners in the spacing unit by certified mail, return receipt requested of its intent to apply for downhole commingling and no objection was received within 20 days of sending this notice; and

(g) a statement attesting that applicant sent a copy of form C-103 to the state land office for wells in spacing units containing state lands or the BLM for wells in spacing units containing federal or tribal lands using sundry notice form 3160-5.

(3) Exceptions for wells located in areas subject to a downhole commingling order issued in a "reference case". Applicants shall file applications to downhole commingle in well bores within an area subject to a division order that excepted any of the criteria required by 19.15.12.11 NMAC or form C-107-A with the district supervisor of the appropriate division district office and, except for the place of filing, shall meet the requirements of the applicable order issued in that "reference case".

D. Applications for establishing a "reference case" or for pre-approval of downhole commingling on an area-wide or pool-wide basis.

(1) Reference cases. If sufficient data exists for a lease, pool, formation or geographical area to render it unnecessary to repeatedly provide the data on form C-107-A, an operator may except any of the various criteria required under 19.15.12.11 NMAC or set forth in form C-107-A by establishing a "reference case". The division, upon its own motion or application from an operator, may establish "reference cases" either administratively or by hearing. Upon division approval of such "reference cases" for specific criteria, the division shall require subsequent form C-107-A only to cite the division order number that established the exceptions and not require the applicant to submit data for those criteria. The division may approve applications involving exceptions to the specific criteria required by 19.15.12.11 NMAC or by form C-107-A after the applicant sends notice to the interest owners in the affected spacing units by certified mail, return receipt requested, based on evidence that the approval would adequately satisfy the conditions of Subsection A of 19.15.12.11 NMAC.

(2) Pre-approval of downhole commingling on a pool-wide or area-wide basis. If sufficient data exists for multiple formations or pools that have previously been commingled or are proposed to be commingled, the division, upon its own motion or application from an operator, may establish downhole commingling on a pool-wide or area-wide basis either administratively or by hearing.

(a) Applications for pre-approval shall include the data required by form C-107-A, a list of the names and address of operators in the pools, previous orders authorizing downhole commingling for the pools or area and a map showing the location of wells in the pools or area and indicating those wells approved for downhole commingling.

(b) The director may approve applications for pre-approval of downhole commingling on a pool-wide or area-wide basis after the applicant sends notice to operators in the affected pools or area by certified mail, return receipt requested,

based on evidence that such approval adequately satisfies the conditions of 19.15.12.11 NMAC.

(c) Upon approval of certain pools or areas for downhole commingling, an operator may obtain approval for subsequent applications for approval to downhole commingle wells within those pools or areas by filing form C-103 in accordance with Paragraph (2) of Subsection C of 19.15.12.11 NMAC.

(3) The division shall maintain and continually update a list of pre-approved pools or areas in Subsection E of 19.15.12.11 NMAC.

E. Pre-approved pools and areas. Downhole commingling is approved within the following pool combinations or geographical areas (provided, however, that the operator shall file form C-103 with the appropriate division district office in accordance with the procedure set forth in Paragraph (2) of Subsection C of 19.15.12.11 NMAC):

Pre-approved pools or geographic areas for downhole commingling, permian basin	
All Blinebry, Tubb, Drinkard, Blinebry -Tubb, Blinebry -Drinkard and Tubb -Drinkard pool combinations within the following geographic area in Lea County:	
township 18 south, range s 37, 38 and 39 east	township 23 south, ranges 36, 37 and 38 east
township 19 south, ranges 36, 37, 38 and 39 east	township 24 south, ranges 36, 37 and 38 east
township 20 south, ranges 36, 37, 38 and 39 east	township 25 south, ranges 36, 37 and 38 east
township 21 south, ranges 36, 37 and 38 east	township 26 south, ranges 36, 37 and 38 east
township 22 south, ranges 36, 37 and 38 east	
Blinebry pools	
6660 Blinebry oil and gas pool (oil)	34200 Justis -Blinebry pool
72480 Blinebry oil and g as pool (pro gas)	46990 monument -Blinebry pool
6670 west Blinebry pool	47395 Nadine -Blinebry pool
12411 Cline lower paddock -Blinebry pool	47400 west Nadine paddock -Blinebry pool
29710 Hardy -Blinebry pool	47960 oil center -Blinebry pool
31700 east Hobbs -Blinebry pool	96314 north Teague lower paddock -Blinebry assoc.
31680 Hobbs upper -Blinebry pool	58300 Teague paddock -Blinebry pool
31650 Hobbs lower -Blinebry pool	59310 east Terry -Blinebry pool
33230 house -Blinebry pool	63780 Weir -Blinebry pool
33225 south house -Blinebry pool	63800 east Weir -Blinebry pool
Tubb pools	
12440 Cline -Tubb pool	47530 west Nadine -Tubb pool
77120 Fowler -Tubb pool	58910 Teague -Tubb pool
26635 south Fowler -Tubb pool	96315 north Teague -Tubb associated pool
78760 house -Tubb pool	60240 Tubb oil and gas pool (oil)
33460 east house -Tubb pool	86440 Tubb oil and gas pool (pro gas)
33470 north house -Tubb pool	87080 W arren -Tubb pool
47090 monument -Tubb pool	87085 east Warren -Tubb pool
47525 Nadine -Tubb pool	
Drinkard pools	
7900 south Brunson Drinkard -abo pool	47505 west Nadine -Drinkard pool
12430 Cline Drinkard -abo pool	47510 Nadine Dri nkard -Abo pool
15390 D -K Drinkard pool	57000 Skaggs -Drinkard pool
19190 Drinkard pool	96768 northwest Skaggs -Drinkard pool
19380 south Drinkard pool	58380 Teague -Drinkard pool
26220 Fowler -Drinkard pool	96313 north Teagu e Drinkard -Abo pool
28390 Goodwin -Drinkard pool	63080 Warren -Drinkard pool
31730 Hobbs -Drinkard pool	63120 east Warren -Drinkard pool
33250 house -Drinkard pool	63840 Weir -Drinkard pool
47503 east Nadine -Drinkard pool	
Blinebry-Tubb pools	
62965 Warren Blinebry -Tubb oil and gas pool	
Tubb-Drinkard pools	
18830 dollarhide Tubb -Drinkard pool	33600 imperial Tubb -Drinkard pool
29760 Hardy Tubb -Drinkard pool	35280 Justis Tubb -Drinkard pool
96356 north Hardy Tubb -Drinkard pool	
pool-combinations, Lea county	
airstrip -bone spring (960) and airstrip -wolfcamp (970) pools Baish -wolfcamp (4480) and maljamar -abo (43250) pools Blinebry oil and gas and Wantz -abo (62700) pools Blinebry oil and gas and south Brun son-Ellenburger (8000) pools Blinebry oil and gas and paddock (49210) pools cerca lower -wolfcamp (11800) and cerca upper -pennsylvanian (11810) pools Drinkard (19190) and paddock (49210) pools Drinkard (19190) and Wantz -abo (62700) pools Drinkard (19190) an d Wantz -granite wash (62730) pools lazy J penn (37430) and south Baum -wolfcamp (4967) pools	

mesa verde -Delaware (96191) and mesa verde -bone spring (96229) pools
west red tank -Delaware (51689) and red tank -bone spring (51683) pools
south shoe bar -wolfcamp (56300) and south shoe bar u pper-penn (56285) pools
Skaggs-glorieta (57190) and Skaggs -Drinkard (57000) pools
west Triste draw -Delaware (59945) and south sand dunes bone spring (53805) pools
Triste draw -Delaware (59930) and Triste draw -bone spring (96603) pools
Tubb oil and gas and p addock (49210) pools
north vacuum -Abo (61760) and vacuum -wolfcamp (62340) pools
vacuum-Blinebry (61850) and vacuum -Glorieta (62160) pools
vacuum-Blinebry (61850) and vacuum -Drinkard (62110) pools
vacuum upper -penn (62320) and vacuum -wolfcamp (62340) pools
Wantz-abo (62700) and Wantz -granite wash (62730) pools
pool combinations, Eddy county
red lake queen -grayburg -san andres (51300) and northeast red lake -glorieta yeso (96836) pools
pool combination, San Juan basin
basin-dakota (71599) and angels peak -Gallup associated (2170) pools
basin-dakota (71599) and Armenta -Gallup (2290) pools
basin-dakota (71599) and Baca -Gallup (3745) pools
basin-dakota (71599) and bisti lower -Gallup (5890) pools
basin-dakota (71599) and BS mesa -Gallup (72920) pools
basin-dakota (71599) and Calloway -Gallup (73700) pools
basin-dakota (71599) and devils fork -Gallup associated (17610) pools
basin-dakota (71599) and ensenada -Gallup (96321) pools
basin-dakota (71599) and flora vista -Gallup (76640) pools
basin-dakota (71599) and Galleg os-Gallup associated (26980) pools
basin-dakota (71599) and ice canyon -Gallup (93235) pools
basin-dakota (71599) and Kutz -Gallup (36550) pools
basin-dakota (71599) and Largo -Gallup (80000) pools
basin-dakota (71599) and otero -Gallup (48450) pools
basin-dakota (71599) and Tapacito -Gallup associated (58090) pools
basin-dakota (71599) and wild horse -Gallup (87360) pools
basin-dakota (71599) and Aztec -pictured cliffs (71280) pools
basin-dakota (71599) and Ballard -pictured cliffs (71439) pools
basin-dakota (7159 9) and blanco -pictured cliffs (72359) pools
basin-dakota (71599) and south blanco -pictured cliffs (72439) pools
basin-dakota (71599) and Fulcher Kutz -pictured cliffs (77200) pools
basin-dakota (71599) and west Kutz -pictured cliffs (79680) pools
basin-dakota (71599) and Tapacito -pictured cliffs (85920) pools
basin-fruitland coal (71629) and Aztec -pictured cliffs (71280) pools
basin-fruitland coal (71629) and Ballard -pictured cliffs (71439) pools
basin-fruitland coal (71629) and blanco -pictured cliffs (72359) pools
basin-fruitland coal (71629) and east blanco -pictured cliffs (72400) pools
basin-fruitland coal (71629) and south blanco -pictured cliffs (72439) pools
basin-fruitland coal (71629) and carracas -pictured cliffs (96154) pools
basin-fruitland coal (7162 9) and choza mesa -pictured cliffs (74960) pools
basin-fruitland coal (71629) and Fulcher Kutz -pictured cliffs (77200) pools
basin-fruitland coal (71629) and west Kutz -pictured cliffs (79680) pools
basin-fruitland coal (71629) and Gavilan -pictured cliffs (7 7360) pools
basin-fruitland coal (71629) and gobernador -pictured cliffs (77440) pools
basin-fruitland coal (71629) and huerfano -pictured cliffs (78840) pools
basin-fruitland coal (71629) and Potwin -pictured cliffs (83000) pools
basin-fruitland coal (71629) and Tapacito -pictured cliffs (85920) pools
basin-fruitland coal (71629) and twin mounds fruitland sand -pictured cliffs (86620) pools
basin-fruitland coal (71629) and W. A. W. fruitland sand -pictured cliffs (87190) pools
blanco-mesaverde (72319) and basin -dakota (71599) pools
blanco-mesaverde (72319) and blanco -pictured cliffs (72359) pools
blanco-mesaverde (72319) and south blanco -pictured cliffs (72439) pools
blanco-mesaverde (72319) and gobernador -pictured cliffs (77440) pools
blanco-mesaverde (72319) and west lindrith Gallup -dakota (39189) pools
blanco-mesaverde (72319) and Tapacito -pictured cliffs (85920) pools
blanco-mesaverde (72319) and Armenta -Gallup (2290) pools
blanco-mesaverde (72319) and BS mesa -Gallup (72920) pools
blanco-mesaverde (72319) and Calloway -Gallup (73700) pools
blanco-mesaverde (72319) and ensenada -Gallup (96321) pools
blanco-mesaverde (72319) and flora vista -Gallup (76640) pools
blanco-mesaverde (72319) and Largo -Gallup (80000) pools
blanco-mesaverde (723 19) and west lindrith Gallup -Dakota (39189) pools

blanco-mesaverde (72319) and McDermott Gallup (81050) pools
blanco-mesaverde (72319) and Potter -Gallup (50387) pools
blanco-mesaverde (72319) and Tapacito -Gallup associated (58090) pools
blanco-mesaverde (7 2319) and wild horse -Gallup (87360) pools
otero-chacra (82329) and Aztec -pictured cliffs (71280) pools
otero-chacra (82329) and basin -dakota (71599) pools
otero-chacra (82329) and blanco -mesaverde (72319) pools
otero-chacra (82329) and south blanco -pictured cliffs (72439) pools
otero-chacra (82329) and Fulcher Kutz -pictured cliffs (77200) pools

[19.15.12.11 NMAC - Rp, 19.15.5.303 NMAC, 12/1/08]

HISTORY of 19.15.12 NMAC:

History of Repealed Material: 19.15.5 NMAC, Oil Production Practices (filed 04/27/2000) repealed 12/1/08.

NMAC History:
Those applicable portions of 19.15.5 NMAC, Oil Production Practices (Section 303) (filed 04/27/2000) was replaced by 19.15.12 NMAC, Pools, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 13 COMPULSORY POOLING

19.15.13.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.13.1 NMAC - N, 12/1/08]

19.15.13.2 SCOPE: 19.15.13 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.13.2 NMAC - N, 12/1/08]

19.15.13.3 STATUTORY AUTHORITY: 19.15.13 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-17.
[19.15.13.3 NMAC - N, 12/1/08]

19.15.13.4 DURATION: Permanent.
[19.15.13.4 NMAC - N, 12/1/08]

19.15.13.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.13.6 NMAC - N, 12/1/08]

19.15.13.6 OBJECTIVE: To establish requirements for implementation of the division's statutory authority to pool interests in oil and gas spacing units.
[19.15.13.6 NMAC - N, 12/1/08]

19.15.13.7 DEFINITIONS:

A. "Infill well" means a well in a compulsory pooled proration or spacing unit to be completed in a pool in which an existing well drilled pursuant to the compulsory pooling order has been completed and not plugged and abandoned.

B. "Operator", for the purposes of 19.15.13 NMAC, means the division or commission appointed operator of a compulsory pooled proration or spacing unit, or its successor.

C. "Pooled working interest" means a working interest or unleased mineral interest that is pooled by division or commission order and not by voluntary agreement of the owner of the interest, except for an unleased mineral interest on federal, state or tribal lands.
[19.15.13.7 NMAC - N, 12/1/08]

19.15.13.8 CHARGE FOR RISK:

A. General rule. Compulsory pooling orders the division enters pursuant to NMSA 1978, Section 70-2-17, as amended, may provide for the recovery, out of the share of production allocable to the working interest of a party that elects not to pay its proportionate share of well costs in advance, in addition to reasonable well costs and costs of supervision and management, of a charge for risk associated with the drilling, completion or working over and re-completion of each unit well for which the order provides. Unless otherwise ordered pursuant to Subsection D of 19.15.13.8 NMAC, the charge for risk is 200 percent of well costs.

B. Well costs shall include the reasonable costs of drilling, reworking, diverting, deepening, plugging back and testing the well; completing the well in a formation pooled by the order; and equipping the well for production.

(1) If, however, a well was previously completed in another formation or bottom hole location, or was previously abandoned without completion, well costs as to that well shall mean only the reasonable costs of re-entering, reworking, diverting, deepening, plugging back or testing the well; completion in the pooled formation or formations and; if necessary, reequipping the well for production, unless the division determines that allowance of all or some portion of historical costs of drilling is just and reasonable due to particular circumstances.

(2) If a well is completed in two or more formations having diverse ownership or a different risk charge percentage, the order shall provide for allocation of well costs between the formations.

(3) As to an interest owner who elects not to pay its share of well costs associated with a specific well in advance, as provided in the applicable order, well costs shall include costs of a subsequent operation undertaken to secure or enhance production from a formation pooled by the order prior to the time that the entire amount of the non-consenting owner's share of well costs and applicable risk charge have been

recovered from the non-consenting owner's share of the well's production. The costs shall include expenses for reworking, diverting, deepening, plugging back, testing, completion or recompletion and equipping for production, but not ordinary operating expenses.

(4) Well costs shall also include reasonable costs of drilling, testing, completing and equipping a substitute well if, in the drilling of a well pursuant to a compulsory pooling order, the operator loses the hole or encounters mechanical difficulties rendering it impracticable to drill to the objective depth and the substitute well is located within 330 feet of the original well and the operator commences drilling within 10 days of the original well's abandonment.

C. An applicant for compulsory pooling is not required to present technical evidence justifying the risk charge provided in Subsection A of 19.15.13.8 NMAC.

D. Exceptions. A person responding to a compulsory pooling application who seeks a different risk charge than that provided in Subsection A of 19.15.13.8 NMAC shall so state in a timely pre-hearing statement filed with the division and served on the applicant in accordance with 19.15.4.13 NMAC, and shall have the burden to prove the justification for the risk charge sought by relevant geologic or technical evidence. The hearing examiner may allow a responding party who has not filed a pre-hearing statement, but who appears in person or by attorney at the hearing, to offer evidence in support of a different risk charge than that Subsection A of 19.15.13.8 NMAC provides, but in such cases the hearing examiner shall allow a continuance of the hearing, if requested, to enable the applicant to present rebuttal evidence.

[19.15.13.8 NMAC - Rp, 19.15.1.35 NMAC, 12/1/08]

19.15.13.9 INFILL WELLS: Whenever 19.15.15 NMAC or an applicable pool order authorizes one or more infill wells within a proration or spacing unit pooled by division or commission order pursuant to NMSA 1978, Section 70-2-17, either the operator or an owner of a pooled working interest may, at any time after completion of the initial well provided in the pooling order, propose drilling of an infill well.

[19.15.13.9 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

19.15.13.10 PROPOSAL BY THE OPERATOR:

A. If the operator proposes an infill well, it shall notify each pooled working interest owner of the proposal by certified mail, return receipt requested, specifying the proposed well's location and depth and including a schedule of estimated well costs and a statement of each pooled working interest owner's gross working interest percentage.

B. Each pooled working interest owner may elect to participate in the proposed infill well by notice in writing to the operator within 30 days after the owner receives the proposal, provided that the election to participate shall not be effective unless the owner so electing pays to the operator the amount of the owner's share of estimated well costs within 30 days after the date of transmission of its notice of election to participate.

C. A pooled working interest owner not electing to participate in the proposed infill well shall be deemed to have elected to become a non-consenting owner with respect to the infill well. The operator shall withhold from the proceeds of the well's production accruing to the working interest of a non-consenting owner the non-consenting owner's share of costs, as defined in 19.15.13 NMAC, of the infill well, together with a risk charge computed at the same rate as provided in the pooling order with respect to the initial well. The operator shall distribute the amounts withheld from the non-consenting owner's share of production for well costs and risk charges proportionately to the persons who have advanced the infill well's cost.

D. Unless it withdraws the proposal the operator shall commence drilling of the proposed infill well no later than 120 days after the expiration of the initial notice period of 30 days. The director may extend the time for commencement of drilling once for not more than an additional 120 days, upon showing of good cause for the extension, without notice or hearing. If the operator has not commenced drilling within the time provided no election previously made shall be binding on a party. If the operator still desires to drill the infill well, it shall resubmit written notice proposing the well as if no prior proposal had been made.

[19.15.13.10 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

19.15.13.11 PROPOSAL BY POOLED WORKING INTEREST OWNER:

A. If a pooled working interest owner proposes an infill well, it shall notify the operator of the proposal by certified mail, return receipt requested, specifying the proposed well's location and depth and including a schedule of estimated well costs. The proposing owner shall mail a copy of the proposal to each of the other pooled working interest owners, or their successors in title as identified by documents of record in the office of the clerk of the county where the proposed well will be located, at the same time that it mails the proposal to the operator.

B. The operator shall, within 60 days after receipt of such notice, either propose an infill well at the specified location and depth as an operator proposal pursuant to 19.15.13.10 NMAC, or notify the owner proposing the well that it declines to do so.

(1) If the operator proposes the well and fewer than all working interest owners elect to participate, the operator may withdraw the proposal unless the originally proposing owner, within 30 days of receipt of notice of such occurrence, advances the share of estimated well costs allocable to all non-consenting owners of pooled working interests.

(2) If the operator proposes the well and all owners consent to the well or the originally proposing owner advances the share of well costs allocable to an otherwise unsubscribed interest, the operator shall commence drilling the proposed infill well within 120 days after it receives notice that either condition has occurred. The director may extend the time for commencement of drilling once for not more than an additional 120 days, upon showing of good cause for the extension, without notice or hearing. Well costs applicable to a non-consenting owner of a pooled working interest, together with the risk charge provided in the original pooling order, shall be recoverable out of the non-consenting owner's share of production as in other cases.

C. If the operator declines to propose a well proposed to it by a pooled working interest owner or fails to commence the well within the time provided, the proposing owner may apply to the division for an order authorizing the drilling of the proposed infill well under the compulsory pooling order's terms. The owner filing the application shall give notice of the application as provided in 19.15.4.12 NMAC to the owners of working interests in the proration or spacing unit, including those whose interests in the proration or spacing unit are pooled by agreement, and, if the proration or spacing unit includes state, federal or tribal minerals, to the state land office or the BLM, as applicable.

[19.15.13.11 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

19.15.13.12 REFUND OF MONEY ADVANCED: If the operator does not commence an infill well proposed pursuant to 19.15.13.10 NMAC within the time provided, including an extension the division allows, it shall refund amounts it received from a pooled party as advance

payment of well costs for the well within 10 days after the expiration of the time provided for commencement of drilling, together with interest on the amount received calculated at the rate of bank of America prime plus three percentage points.
[19.15.13.12 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

19.15.13.13 DETERMINATION OF REASONABLE COSTS: The provision of the applicable compulsory pooling order regarding reporting of actual well costs to the division and to pooled working interest owners, opportunity for objections to those costs, determinations of reasonableness of well costs and adjustment of the amount paid to a participating pooled working interest owner to reflect reasonable well costs shall apply to a well drilled pursuant to 19.15.13.10 NMAC or 19.15.13.11 NMAC.
[19.15.13.13 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

HISTORY of 19.15.13 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions (filed 04/27/2001) repealed 12/1/08.

NMAC History:
Those applicable portions of 19.15.1 NMAC, General Provisions (Sections 35 and 36) (filed 04/27/2001) was replaced by 19.15.13 NMAC, Compulsory Pooling, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 14 DRILLING PERMITS

19.15.14.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.14.1 NMAC - N, 12/1/08]

19.15.14.2 SCOPE: 19.15.14 NMAC applies to persons engaged in drilling oil and gas wells within New Mexico.
[19.15.14.2 NMAC - N, 12/1/08]

19.15.14.3 STATUTORY AUTHORITY: 19.15.14 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.14.3 NMAC - N, 12/1/08]

19.15.14.4 DURATION: Permanent.
[19.15.14.4 NMAC - N, 12/1/08]

19.15.14.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.14.5 NMAC - N, 12/1/08]

19.15.14.6 OBJECTIVE: To require an operator to obtain a permit prior to commencing drilling, deepening or reentry operations or before plugging a well back to a different pool or completing or recompleting a well in an additional pool and to establish procedures for application for and approval or denial of the permit.
[19.15.14.6 NMAC - N, 12/1/08]

19.15.14.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.14.8 PERMIT TO DRILL, DEEPEN OR PLUG BACK: An operator shall obtain a permit from the division prior to commencing drilling, deepening or reentry operations, or before plugging a well back to a different pool or completing or recompleting a well in an additional pool.
[19.15.14.8 NMAC - Rp, 19.15.3.102 NMAC, 12/1/08]

19.15.14.9 APPLICATIONS: An operator shall file a complete form C-101 and complete form C-102 with the division and meet the following requirements, if applicable:

A. an applicant for a permit to drill a well within the corporate limits of a city, town or village shall give notice to the duly constituted governing body of the city, town or village or its duly authorized agent and certify on form C-101 that it gave such notice;

B. an applicant for a permit to drill in a quarter-quarter section containing an existing well or wells operated by another operator shall concurrently file a plat or other acceptable document locating and identifying the well or wells, furnish a copy of the application to the other operator or operators in the quarter-quarter section and certify on form C-101 that it furnished the copies; and

C. an applicant for a permit to operate a well in a spacing or proration unit containing an existing well or wells operated by another operator shall also comply with Subsection B of 19.15.15.12 NMAC.
[19.15.14.9 NMAC - Rp, 19.15.3.102 NMAC and 19.15.13.1101 NMAC, 12/1/08]

19.15.14.10 APPROVAL OR DENIAL OF A PERMIT TO DRILL, DEEPEN OR PLUG BACK:

A. The director or the director's designee may deny a permit to drill, deepen or plug back if the applicant is not in compliance with Subsection A of 19.15.5.9 NMAC. In determining whether to grant or deny the permit, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having more than the allowed number of wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having more than the allowed number of wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

B. The division may impose conditions on an approved permit to drill, deepen or plug back.

C. If the division denies the permit it shall return the form C-101 to the applicant with the cause for rejection stated.
[19.15.14.10 NMAC - Rp, 19.15.3.102 NMAC and 19.15.13.1101 NMAC, 12/1/08]

19.15.14.11 APPROVED FORM C-101 AT WELL SITE: The operator shall keep a copy of the approved form C-101 at the well site during drilling operations.
[19.15.14.11 NMAC - Rp, 19.15.3.102 NMAC, 12/1/08]

HISTORY of 19.15.14 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) and 19.15.13 NMAC, Reports (filed 6/17/2004) repealed 12/1/08.

NMAC History:
Those applicable portions of 19.15.3 NMAC, Drilling (Section 118) (filed 10/29/2001) and 19.15.13 NMAC, Reports (Section 1101) (filed 6/17/2004) were replaced by 19.15.14 NMAC, Drilling

Permits, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 15 WELL SPACING AND LOCATION

19.15.15.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.15.1 NMAC - N, 12/1/08]

19.15.15.2 SCOPE: 19.15.15 NMAC applies to persons engaged in drilling oil and gas wells within New Mexico.
[19.15.15.2 NMAC - N, 12/1/08]

19.15.15.3 STATUTORY AUTHORITY: 19.15.15 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12, which authorizes the division to establish well spacing.
[19.15.15.3 NMAC - N, 12/1/08]

19.15.15.4 DURATION: Permanent.
[19.15.15.4 NMAC - N, 12/1/08]

19.15.15.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.15.5 NMAC - N, 12/1/08]

19.15.15.6 OBJECTIVE: To classify wells and establish well location and well acreage requirements and procedures for multiple operators within a spacing unit, obtaining approval of unorthodox well locations and for pooling or communitizing small acreage oil lots.
[19.15.15.6 NMAC - N, 12/1/08]

19.15.15.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]
[19.15.15.7 NMAC - N, 12/1/08]

19.15.15.8 CLASSIFICATION OF WELLS: WILDCAT AND DEVELOPMENT WELLS:

A. Wildcat well.

(1) In San Juan, Rio Arriba, Sandoval and McKinley counties, a wildcat well is a well to be drilled the spacing unit of which is a distance of two miles or more from:

(a) the outer boundary of a defined pool that has produced oil or gas from the formation to which the well is projected to be drilled; and

(b) a well that has produced oil or gas from the formation to which the proposed well is projected to be drilled.

(2) In all counties except San Juan, Rio Arriba, Sandoval and McKinley, a wildcat well is a well to be drilled the spacing unit of which is a distance of one mile or more from:

(a) the outer boundary of a defined pool that has produced oil or gas from the formation to which the well is projected to be drilled; and

(b) a well that has produced oil or gas from the formation to which the proposed well is projected.

B. Development well.

(1) A well that is not a wildcat well is classified as a development well for the nearest pool that has produced oil or gas from the formation to which the well is projected to be drilled. The operator shall space, drill, operate and produce a development well in accordance with the rule or order in effect for that pool, provided the well is completed in that pool.

(2) An operator shall operate and produce a well classified as a development well for a pool but completed in a producing formation not included in that pool's vertical limits in accordance with the rule in effect for the nearest pool that is producing from that formation within the two miles in San Juan, Rio Arriba, Sandoval and McKinley counties or within one mile everywhere else. If there is no designated pool for that producing formation within the two miles in San Juan, Rio Arriba, Sandoval and McKinley counties or within one mile everywhere else, the well shall be re-classified as a wildcat well.
[19.15.15.18 NMAC - Rp, 19.15.3.104 NMAC, 12/1/08]

19.15.15.9 OIL WELL ACREAGE AND WELL LOCATION REQUIREMENTS:

A. A wildcat well that the operator projects to drill as an oil well to a formation and in an area that in the division's opinion may reasonably be presumed to produce oil rather than gas, and each development well for a defined oil pool unless otherwise provided in special pool orders, shall be located on a spacing unit consisting of approximately 40 contiguous surface acres, substantially in the form of a square that is a legal subdivision of the United States public land surveys and is a governmental quarter-quarter section or lot, and shall be located no closer than 330 feet to a boundary of the unit. Unless otherwise provided in applicable special pool order, a 40-acre oil spacing unit may contain up to four wells. Only those 40-acre spacing units committed to active secondary recovery projects shall be permitted more than four wells.

B. If a well drilled as an oil well is completed as a gas well but does not conform to the applicable gas well location requirements, the operator shall apply for administrative approval for a non-standard location before the well can produce. The director may set the application for hearing.
[19.15.15.9 NMAC - Rp, 19.15.3.104 NMAC, 12/1/08]

19.15.15.10 GAS WELL ACREAGE AND WELL LOCATION REQUIREMENTS: A wildcat well that the operator projects to drill as a gas well to a formation and in an area that in the division's opinion may reasonably be presumed to produce gas rather than oil and each development well for a defined gas pool, unless otherwise provided in special pool orders, shall be spaced and located as follows.

A. 640-acre spacing applies to a deep gas well in Rio Arriba, San Juan, Sandoval or McKinley county that is projected to be drilled to a gas producing formation older than the Dakota formation or is a development well within a gas pool created and defined by the division after June 1, 1997 in a formation older than the Dakota formation, which formation or pool is located within the surface outcrop of the pictured cliffs formation (*i.e.*, the San Juan basin). The well shall be located on a spacing unit consisting of 640 contiguous surface acres, more or less, substantially in the form of a square that is a section and legal subdivision of the United States public land surveys and shall be located no closer than:

(1) 1200 feet to an outer boundary of the spacing unit;

(2) 130 feet to a quarter section line; and

(3) 10 feet to a quarter-quarter section line or subdivision inner boundary.

B. 320-acre spacing applies to a deep gas well in Lea, Chaves, Eddy or Roosevelt county that is projected to be drilled to a gas producing formation, or is within a defined gas pool, that is in the Wolfcamp or an older formation. The well shall be located on a spacing unit consisting of 320 surface contiguous acres, more or less, comprising any two contiguous quarter sections of a single section that is a legal subdivision of the United States public land surveys provided that:

(1) the initial well on a 320-acre unit is located no closer than 660 feet to the outer boundary of the quarter section on which the well is located and no closer than 10 feet to a quarter-quarter section line or

subdivision inner boundary; and

(2) only one infill well on a 320-acre unit shall be allowed provided that the well is located in the quarter section of the 320-acre unit not containing the initial well and is no closer than 660 feet to the outer boundary of the quarter section and no closer than 10 feet to a quarter-quarter section line or subdivision inner boundary.

C. 160-acre spacing applies to a gas well not covered above. The well shall be located in a spacing unit consisting of 160 surface contiguous acres, more or less, substantially in the form of a square that is a quarter section and a legal subdivision of the United States public land surveys and shall be located no closer than 660 feet to an outer boundary of the unit and no closer than 10 feet to a quarter-quarter section or subdivision inner boundary.

[19.15.15.10 NMAC - Rp, 19.15.3.104 NMAC, 12/1/08]

19.15.15.11 ACREAGE ASSIGNMENT:

A. Well tests and classification. The operator of a wildcat or development gas well to which more than 40 acres has been dedicated shall conduct a potential test within 30 days following the well's completion and file the test with the division within 10 days following the test's completion. (See 19.15.19.8 NMAC)

(1) The completion date for a gas well is the date of the conclusion of active completion work on the well.

(2) If the division determines that a well should not be classified as a gas well, the division shall reduce the acreage dedicated to the well to the standard acreage for an oil well.

(3) The operator's failure to file the test within the specified time subjects the well to the acreage reduction.

B. Non-standard spacing units. An operator shall not produce a well that does not have the required amount of acreage dedicated to it for the pool or formation in which it is completed until the division has formed and dedicated a standard spacing unit for the well or approved a non-standard spacing unit.

(1) Division district offices may approve non-standard spacing units without notice when the unorthodox size or shape is necessitated by a variation in the legal subdivision of the United States public land surveys or consists of an entire governmental section, and the non-standard spacing unit is not less than 70 percent or more than 130 percent of a standard spacing unit. The operator shall obtain division approval of form C-102 showing the proposed non-standard spacing unit and the acreage contained in the unit.

(2) The director may approve administratively an application for non-standard spacing units after notice and opportunity for hearing when the unorthodox size or shape is necessitated by a variation in the legal subdivision of the United States public land surveys or the following facts exist:

(a) the non-standard spacing unit consists of a single quarter-quarter section or lot or quarter-quarter sections or lots joined by a common side; and

(b) the non-standard spacing unit lies wholly within a single quarter section if the well is completed in a pool or formation for which 40, 80 or 160 acres is the standard spacing unit size; a single half section if the well is completed in a pool or formation for which 320 acres is the standard spacing unit size; or a single section if the well is completed in a pool or formation for which 640 acres is the standard spacing unit size.

(3) An operator shall file an application for administrative approval of non-standard spacing units pursuant to Paragraph (2) of Subsection B of 19.15.15.11 NMAC with the division's Santa Fe office that is accompanied by:

(a) a plat showing the spacing unit and an applicable standard spacing unit for that pool or formation, the proposed well dedications and all adjoining spacing units;

(b) a list of affected persons as defined in Paragraph (2) of Subsection A of 19.15.4.12 NMAC; and

(c) a statement discussing the reasons for the formation of the non-standard spacing unit.

(4) The applicant shall submit a statement attesting that the applicant, on or before the date the applicant submitted the application to the division, notified the affected persons by sending a copy of the application, including a copy of the plat described in Paragraph (3) of Subsection B of 19.15.15.11 NMAC, by certified mail, return receipt requested, advising them that if they have an objection they must file the objection in writing with the division within 20 days from the date the division receives the application. The director may approve the application without hearing upon receipt of waivers from all the notified persons or if no person has filed an objection within the 20-day period.

(5) The director may set for hearing an application for administrative approval.

C. Exceptions to number of wells per spacing unit. The director may permit exceptions to 19.15.15 NMAC or special pool orders concerning the number of wells allowed per spacing unit only after notice and opportunity for hearing. An applicant for an exception shall notify all affected persons defined in Paragraph (2) of Subsection A of 19.15.4.12 NMAC.

[19.15.15.11 NMAC - Rp, 19.15.3.104 NMAC, 12/1/08]

19.15.15.12 SPECIAL RULES FOR MULTIPLE OPERATORS WITHIN A SPACING UNIT:

A. Allowable production. If an operator completes a well in an oil pool or prorated gas pool, located within a proration unit containing an existing well or wells producing from that pool and operated by a different operator, unless all operators of wells producing from that proration unit agree, the allowable production from the newly completed well shall not exceed the difference between the allowable production for the proration unit and the actual production from the pool of the existing well or wells within the proration unit. The division may authorize exceptions to Subsection A of 19.15.15.12 NMAC after hearing following appropriate notice.

B. Notice requirements.

(1) An operator who intends to operate a well in a spacing or proration unit containing an existing well or wells operated by another operator shall, prior to filing the application for permit to drill, deepen or plug back for the well, furnish written notification of its intent to the operator of each existing well, and, if the unit includes state, federal or tribal minerals, to the state land office or BLM, as applicable; provided that separate notification to the BLM is not required if the operator will file the application with the BLM pursuant to 19.15.7.11 NMAC.

(2) The operator shall send the notices by certified mail, return receipt requested, and shall specify the proposed well's location and depth.

(3) The applicant shall submit with its application for permit to drill, deepen or plug back either

(a) a statement attesting that, at least 20 days before the date that the application was submitted to the division, the applicant sent notices to the designated parties, by certified mail, return receipt requested, advising them that if they have an objection they must deliver a written statement of objection to the proposing operator within 20 days of the date the operator mailed the notice, and that it has received no such objection; or

(b) written waivers from all persons required to be notified (the BLM's approval of the application being deemed equivalent to waiver by that agency); in event of objection, the division may approve the application only after hearing.

C. Transfer of wells. If an operator transfers operation of less than all of its wells located within a spacing or proration unit to another operator, and the spacing unit includes state, federal or tribal minerals, the operator shall, prior to filing form C-145 to effectuate the transfer, notify in

writing the state land office or BLM, as applicable, of the transfer.

D. Compulsory pooled units. No provision of 19.15.15 NMAC authorizes the operation of a producing well within a unit described in an existing compulsory pooling order by an operator other than the operator designated in the order.

E. Federal or state exploratory units. No provision of 19.15.15 NMAC authorizes a producing well's operation within a federal exploratory unit or state exploratory unit by an operator other than the unit's designated operator except as provided by BLM regulations or state land office rules applicable to the unit.

[19.15.15.12 NMAC - Rp, 19.15.3.104 NMAC, 12/1/08]

19.15.15.13 UNORTHODOX LOCATIONS:

A. Well locations within a secondary recovery, tertiary recovery or pressure maintenance project for producing wells or injection wells that are unorthodox based on 19.15.15.9 NMAC's requirements and are necessary for an efficient production and injection pattern are authorized, provided that the unorthodox location within the project is no closer than the required minimum distance to the outer boundary of the lease or unitized area, and no closer than 10 feet to a quarter-quarter section line or subdivision inner boundary. These locations only require such prior approvals as are necessary for an orthodox location.

B. The director may grant an exception to the well location requirements of 19.15.15.9 NMAC and 19.15.15.10 NMAC or special pool orders after notice and opportunity for hearing when the exception is necessary to prevent waste or protect correlative rights.

C. The operator shall submit applications for administrative approval pursuant to Subsection B of 19.15.15.13 NMAC to the division's Santa Fe office accompanied by a plat showing the spacing unit, the proposed unorthodox well location and the adjoining spacing units and wells; a list of affected persons as defined in Paragraph (2) of Subsection A of 19.15.4.12 NMAC; and information evidencing the need for the exception. The division shall give notice as required in 19.15.4.9 NMAC and the operator shall give notice as required by Paragraph (2) of Subsection A of 19.15.4.12 NMAC.

D. The applicant shall submit a statement attesting that the applicant, on or before the date that the applicant submitted the application to the division, sent notification to the affected persons by furnishing a copy of the application, including a copy of the plat described in Subsection C of 19.15.15.13 NMAC, by certified mail, return receipt requested, advising them that if they have an objection they shall file it in writing with the division within 20 days from the date the division receives the application. The director may approve the unorthodox location upon receipt of waivers from all the affected persons or if no affected person has filed an objection within the 20-day period.

E. The director may set for hearing an application for administrative approval of an unorthodox location.

F. Whenever the division approves an unorthodox location, it may order any action necessary to offset an advantage of the unorthodox location.

[19.15.15.13 NMAC - Rp, 19.15.3.104 NMAC, 12/1/08]

19.15.15.14 EFFECT OF NON-STANDARD UNITS ON ALLOWABLES:

A. If the drilling tract is within a prorated/allocated oil pool or is subsequently placed within the pool and the drilling tract consists of less than 39½ acres or more than 40½ acres, the top proration unit allowable for the well shall be increased or decreased in the proportion that the number of acres in the drilling tract bears to 40.

B. If the drilling tract is within a prorated/allocated gas pool or is subsequently placed within the pool and the drilling tract consists of less than 158 acres or more than 162 acres in 160-acre pools, less than 316 acres or more than 324 acres in 320-acre pools or less than 632 acres or more than 648 acres in 640-acre pools, the top allowable for the well shall be decreased or increased in the proportion that the number of acres in the drilling tract bears to a standard spacing unit for the pool.

C. In computing acreage under Subsections A and B of 19.15.15.14 NMAC, less than one quarter acre shall not be counted but one-half acre or more shall count as one acre.

D. The provisions of Subsections A and B of 19.15.15.14 NMAC apply only to wells completed after January 1, 1950.

[19.15.15.14 NMAC - Rp, 19.15.3.104 NMAC, 12/1/08]

19.15.15.15 DIVISION-INITIATED EXCEPTIONS: In order to prevent waste, the division may, after hearing, set different spacing requirements and require different acreage for drilling tracts in a defined oil or gas pool.

[19.15.15.15 NMAC - Rp, 19.15.3.104 NMAC, 12/1/08]

19.15.15.16 POOLING OR COMMUNITIZATION OF SMALL OIL LOTS:

A. The division may approve the pooling or communitization of fractional oil lots of 20.49 acres or less with a contiguous oil spacing unit when the ownership is common and the tracts are part of the same lease with the same royalty interests if the following requirements are satisfied:

(1) the operator submits an application for administrative approval to the division's Santa Fe office accompanied by:

(a) a plat showing the dimensions and acreage involved, the acreage's ownership, the location of existing and proposed wells and adjoining spacing units;

(b) a list of affected persons as defined in Paragraph (2) of Subsection A of 19.15.4.12 NMAC; and

(c) a statement discussing the reasons for the pooling or communitization; and

(2) the applicant submits a statement attesting that the applicant, on or before the date the applicant submitted the application to the division, sent notification to the affected persons by submitting a copy of the application, including a copy of the plat described in Paragraph (1) of Subsection A of 19.15.15.16 NMAC, by certified mail, return receipt requested, advising them that if they have an objection they must file it in writing with the division within 20 days from the date the division receives the application.

B. The director may approve the application upon receipt of waivers from all the notified persons or if no person has filed an objection within the 20-day period.

C. The director may set for hearing an application for administrative approval.

D. The division may consider the common ownership and common lease requirements met if the applicant furnishes with the application a copy of an executed pooling agreement communitizing the tracts involved.

[19.15.15.16 NMAC - Rp, 19.15.3.104 NMAC, 12/1/08]

HISTORY of 19.15.15 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/08.

NMAC History:

Those applicable portions of 19.15.3 NMAC, Drilling (Section 104) (filed 10/29/2001) were replaced by 19.15.15 NMAC, Well Spacing and Location, effective 12/1/08.

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NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 16 DRILLING AND PRODUCTION

19.15.16.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.16.1 NMAC - Rp, 19.15.3.1 NMAC, 12/1/08]

19.15.16.2 SCOPE: 19.15.16 NMAC applies to persons engaged in the drilling and production of oil and gas wells within New Mexico.
[19.15.16.2 NMAC - Rp, 19.15.3.2 NMAC, 12/1/08]

19.15.16.3 STATUTORY AUTHORITY: 19.15.16 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.16.3 NMAC - Rp, 19.15.3.3 NMAC, 12/1/08]

19.15.16.4 DURATION: Permanent.
[19.15.16.4 NMAC - Rp, 19.15.3.4 NMAC, 12/1/08]

19.15.16.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.16.5 NMAC - Rp, 19.15.3.5 NMAC, 12/1/08]

19.15.16.6 OBJECTIVE: To regulate the drilling and production of oil and gas wells within the state.
[19.15.16.6 NMAC - Rp, 19.15.3.6 NMAC, 12/1/08]

19.15.16.7 DEFINITIONS:

A. "Azimuth" means the deviation in the horizontal plane of a well bore expressed in terms of compass degrees.

B. "Deviated well" means a well bore that is intentionally deviated from vertical but not with an intentional azimuth.

C. "Directional well" means a well bore that is intentionally deviated from vertical with an intentional azimuth.

D. "Kick-off point" means the point at which a directional well is intentionally deviated from vertical.

E. "Lateral" means a portion of a directional well past the point where the well bore has been intentionally departed from the vertical.

F. "Penetration point" means the point where a directional well penetrates the top of the pool from which it is intended to produce.

G. "Producing area" means the portion of a project area that lies within a window formed by plotting the measured distance from the project area's north, south, east and west boundaries, inside of which a vertical well bore can be drilled and produced in conformity with the setback requirements from the outer boundary of a standard spacing unit for the applicable pools.

H. "Producing interval" means that portion of a directional well drilled inside a pool's vertical limits between its penetration point and its terminus.

I. "Project area" means an area the operator designates on form C-102 that a spacing unit's outer boundaries enclose, a combination of complete, contiguous spacing units or an approved secondary, tertiary or pressure maintenance project.

J. "Project well" means a well drilled, completed, produced or injected into as either a vertical well, deviated well or directional well.

K. "Spacing unit" means the acreage that is dedicated for a well in accordance with 19.15.15 NMAC. Included in this definition is a unit of proration for oil or gas as defined by the division and all non-standard units the division has previously approved.

L. "Terminus" means the farthest point attained along the well bore.

M. "Vertical well" means a well that does not have an intentional departure or course deviation from the vertical.
[19.15.16.7 NMAC - Rp, 19.15.3.111 NMAC, 12/1/08]

19.15.16.8 SIGN ON WELLS:

A. An operator shall identify wells and related facilities the division regulates by a sign, which shall remain in place until the operator plugs and abandons the well and closes the related facilities.

B. For drilling wells, the operator shall post the sign on the derrick or not more than 20 feet from the well.

C. The sign shall be of durable construction and the lettering shall be legible and large enough to be read under normal conditions at a distance of 50 feet.

D. The wells on each lease or property shall be numbered in non-repetitive, logical and distinctive sequence.

E. An operator shall have 90 days from the effective date of an operator name change to change the operator name on the well sign unless the division grants an extension of time, for good cause shown along with a schedule for making the changes.

F. Each sign shall show the:

(1) well number;

(2) property name;

(3) operator's name;

(4) location by footage, quarter-quarter section, township and range (or unit letter can be substituted for the quarter-quarter section); and

(5) API number.
[19.15.16.8 NMAC - Rp, 19.15.3.103 NMAC, 12/1/08]

19.15.16.9 SEALING OFF STRATA:

A. During the drilling of an oil well, injection well or other service well, the operator shall seal and separate the oil, gas and water strata above the producing or injection horizon to prevent their contents from passing into other strata.

B. The operator shall ensure that fresh waters and waters of present or probable value for domestic, commercial or stock purposes are confined to their respective strata and are adequately protected by division-approved methods. The operator shall take special precautions by methods satisfactory to the division in drilling and abandoning wells to guard against loss of artesian water from the strata in which it occurs, and the contamination of artesian water by objectionable water, oil or gas.

C. The operator shall ensure that water is shut off and excluded from the various oil- and gas-bearing strata that are penetrated. The operator shall ordinarily make water shut-offs by cementing casing.
[19.15.16.9 NMAC - Rp, 19.15.3.106 NMAC, 12/1/08]

19.15.16.10 CASING AND TUBING REQUIREMENTS:

A. The operator shall equip a well drilled for oil or gas with surface and intermediate casing strings and cement as may be necessary to effectively seal off and isolate all water-, oil- and gas-bearing strata and other strata encountered in the well down to the casing point. In addition, the operator shall equip a well completed for oil or gas production with a string of properly cemented production casing at sufficient depth to ensure protection of oil- and gas-bearing strata encountered in the well, including the strata to be produced.

B. The operator shall use

sufficient cement on surface casing to fill the annular space behind the casing to the top of the hole, provided that authorized division field personnel may allow exceptions to this requirement when known conditions in a given area render compliance impracticable.

C. Cementing shall be by pump and plug method unless the division expressly authorizes some other method.

D. Cementing shall be with conventional-type hard-setting cements to which the operator has added additives (lighteners, densifiers, extenders, accelerators, retarders, etc.) to suit conditions in the well.

E. Authorized division field personnel may, when conditions warrant, allow exceptions to Subsection D of 19.15.16.10 NMAC and permit the operator to use oil-base casing packing material in lieu of hard-setting cements on intermediate and production casing strings; provided that when the operator uses such materials on the intermediate casing string, the operator places conventional-type hard-setting cements throughout all oil- and gas-bearing zones and throughout at least the lowermost 300 feet of the intermediate casing string. When the operator uses such materials on the production casing string, the operator shall place conventional-type hard-setting cements throughout all oil- and gas-bearing zones that shall extend upward a minimum of 500 feet above the uppermost perforation or, in the case of an open-hole completion, 500 feet above the production casing shoe.

F. The operator shall test casing strings and prove satisfactory as provided in Subsection I of 19.15.16.10 NMAC.

G. After cementing, but before commencing tests Subsection I of 19.15.16.10 NMAC requires, all casing strings shall stand cemented in accordance with one of the options in Paragraphs (1) and (2) of Subsection G of 19.15.16.10 NMAC. Regardless of which option the operator chooses, the casing shall remain stationary and under pressure for at least eight hours after the operator places the cement. Casing shall be under pressure if the operator uses some acceptable means of holding pressure or if the operator employs one or more float valves to hold the cement in place. The operator shall either

(1) allow casing strings to stand cemented a minimum of 18 hours prior to commencing tests; an operator using this option shall report on form C-103 the actual time the cement was in place before the operator initiated tests; or

(2) in the counties of San Juan, Rio Arriba, McKinley, Sandoval, Lea, Eddy, Chaves and Roosevelt only, allow casing strings to stand cemented until the cement reaches a compressive strength of at least 500 psi in the "zone of interest" before commencing tests; provided however, that the operator shall not commence tests until the cement is in place for at least eight hours.

(a) The "zone of interest" for surface and intermediate casing strings is the bottom 20 percent of the casing string, but is no more than 1000 feet nor less than 300 feet of the bottom-part of the casing unless the casing is set at less than 300 feet. The "zone of interest" for production casing strings includes the interval or intervals where immediate completion is contemplated.

(b) To determine that a minimum compressive strength of 500 psi has been attained, the operator shall use the typical performance data for the particular cement mix used in the well, at the minimum temperature indicated for the zone of interest by Figure 107-A, Temperature Gradient Curves. Typical performance data used shall be that data the cement manufacturer or a competent materials testing agency furnishes, as determined in accordance with the latest edition of API publication Recommended Practice for Testing Well Cements, RP 10B-2.

(See Temperature Gradient - Page 17A)

H. An operator using the compressive strength criterion in Paragraph (2) of Subsection G of 19.15.16.10 NMAC shall report the following information on form C-103:

(1) volume of cement slurry in cubic feet and brand name of cement and additives, percent additives used and sequence of placement if the operator uses more than one type cement slurry;

(2) approximate temperature of cement slurry when mixed;

(3) estimated minimum formation temperature in zone of interest;

(4) estimate of cement strength at time of casing test; and

(5) actual time cement in place prior to starting test.

I. The operator shall test casing strings except conductor pipe after cementing and before commencing other operations on the well. The operator shall file form C-103 with the division for each casing string reporting the grade and weight of pipe used. In the case of combination strings utilizing pipe of varied grades or weights, the operator shall report the footage of each grade and weight used. The operator shall also report results of the casing test, including actual pressure held on pipe and the pressure drop observed on the same form C-103.

(1) The operator shall pressure test casing strings in wells drilled with rotary tools. Minimum casing test pressure shall be approximately one-third of the manufacturer's rated internal yield pressure except that the test pressure shall not be less than 600 psi and need not be greater than 1500 psi. In cases where combination strings are involved, the above test pressure shall apply to the lowest pressure rated casing used. The operator shall apply test pressures for a period of 30 minutes. If a drop of more than 10 percent of the test pressure occurs the casing shall be considered defective and the operator shall apply corrective measures.

(2) The operator may test casing strings in wells drilled with cable tools as outlined in Paragraph (1) of Subsection I of 19.15.16.10 NMAC, or by bailing the well dry in which case the hole shall remain satisfactorily dry for a period of at least one hour before the operator commences further operations on the well.

J. Well tubing requirements.

(1) The operator shall tube flowing oil wells equipped with casing larger in size than 2 7/8-inch OD.

(2) The operator shall tube gas wells equipped with casing larger in size than 3½-inch OD.

(3) The operator shall set tubing as near the bottom as practical and tubing perforations shall not be more than 250 feet above top of pay zone.

(4) The district supervisor of the appropriate division district office, upon application, may grant exceptions to these requirements, provided waste will not be caused.

(5) The district supervisor may request that the director review an application. The operator shall submit information and give notice as the director requests. The division may approve un-protested applications after 20 days of receipt of the application and supporting information. If a person protests the application, or the director decides, the division shall set the application for hearing.

[19.15.16.10 NMAC - Rp, 19.15.3.107 NMAC, 12/1/08]

19.15.16.11 DEFECTIVE CASING OR CEMENTING: If a well appears to have a defective casing program or faultily cemented or corroded casing that will permit or may create underground waste or contamination of fresh waters, the operator shall give written notice to the division within five working days and proceed with diligence to use the appropriate method and means to eliminate the hazard. If the hazard of waste or contamination of fresh water cannot be eliminated, the operator shall properly plug and abandon the well.

[19.15.16.11 NMAC - Rp, 19.15.3.108 NMAC, 12/1/08]

19.15.16.12 BLOWOUT PREVENTION: (See Subsection B of 19.15.10

NMAC also)

A. The operator shall install and maintain blowout preventers in good working order on drilling rigs operating in areas of known high pressures at or above the projected depth of the well and in areas where pressures that will be encountered are unknown, and on workover rigs working on wells in which high pressures are known to exist.

B. The operator shall install and maintain blowout preventers in good working order on drilling rigs and workover rigs operating within the corporate limits of a city, town or village, or within 1320 feet of habitation, a school or a church, wherever located.

C. An operator, when filing form C-101 or form C-103 for an operation requiring blowout prevention equipment in accordance with Subsections A and B of 19.15.16.12 NMAC, shall submit a proposed blowout prevention program for the well. The district supervisor may modify the program as submitted if, in the district supervisor's judgment, modification is necessary.

[19.15.16.12 NMAC - Rp, 19.15.3.109 NMAC, 12/1/08]

19.15.16.13 PULLING OUTSIDE STRINGS OF CASING: In pulling outside strings of casing from an oil or gas well, the operator shall keep and leave the space outside the casing left in the hole full of mud-laden fluid or cement of adequate specific gravity to seal off fresh and salt water strata and strata bearing oil or gas not producing.

[19.15.16.13 NMAC - Rp, 19.15.3.110 NMAC, 12/1/08]

19.15.16.14 DEVIATION TESTS AND DIRECTIONAL WELLS:

A. Deviated well bores.

(1) Deviation tests required. An operator shall test a vertical or deviated well that is drilled or deepened at reasonably frequent intervals to determine the deviation from the vertical. The operator shall make the tests at least once each 500 feet or at the first bit change succeeding 500 feet. The operator shall file with the division a tabulation of deviation tests run, that is sworn to and notarized, with form C-104.

(2) Excessive deviation. When the deviation averages more than five degrees in a 500-foot interval, the operator shall include the calculations of the hole's maximum possible horizontal displacement. When the maximum possible horizontal displacement exceeds the distance to the appropriate unit's nearest outer boundary line the operator shall run a directional survey to establish the location of the producing interval or intervals.

(3) Unorthodox locations. If the results of the directional survey indicate that the producing interval is more than 50 feet from the approved surface location and closer than the minimum setback requirements to the applicable unit's outer boundaries, then the well is considered unorthodox. To obtain authority to produce the well, the operator shall file an application with the director with a copy to the appropriate division district office, and shall otherwise follow the normal process outlined in Subsection C of 19.15.15.13 NMAC to obtain approval of the unorthodox location.

(4) Directional survey requirements. Upon the director's request, the operator shall directionally survey a vertical or deviated well. The operator shall notify the appropriate division district office of the approximate time the operator will conduct the directional survey. The operator shall file directional surveys run on a well with the division upon the well's completion. The division shall not assign an allowable to the well until the operator has filed the directional surveys.

B. Directional well bores.

(1) Directional drilling within a project area. The appropriate division district office may grant a permit to directionally drill a well bore if the producing interval is entirely within the producing area or at an unorthodox location the division previously approved. Additionally, if the project area consists of a combination of drilling units and includes state, federal or tribal lands, the operator shall send a copy of form C-102 to the state land office or the BLM, as applicable.

(2) Unorthodox well bores. If all or part of a directional well bore's producing interval is projected to be outside of the producing area, the well's location is considered unorthodox. To obtain approval for the well's location, the applicant shall file a written application in duplicate with the director with a copy to the appropriate division district office and shall otherwise follow the normal process in Subsection C of 19.15.15.3 NMAC.

(3) Allowables for project areas with multiple proration units. The division shall base the maximum allowable it assigns to the project area within a prorated pool upon the number of standard spacing units or approved non-standard spacing units that the directional well bore's producing interval develops or traverses. The maximum allowable shall apply to production from the project area, including vertical well bores on standard spacing units inside the project area.

(4) Directional surveys required. An operator shall run a directional survey on each well drilled pursuant to Subsection B of 19.15.16.14 NMAC. The operator shall notify the appropriate division district office of the approximate time the operator will conduct the directional survey. The operator shall file a directional survey run on a well with the division upon the well's completion. The division shall not assign an allowable to the well until the operator files the directional survey. If the directional survey indicates that part of the producing interval is outside of the producing area, or, in the case of an approved unorthodox location, less than the approved setback requirements from the applicable unit's outer boundary, then the operator shall file an application with the director with a copy to the appropriate division district office and shall otherwise follow the normal process outlined in Subsection C of 19.15.15.13 NMAC to obtain approval of the unorthodox location.

(5) Re-entry of vertical or deviated well bores for directional drilling projects. These well bores are considered orthodox provided the surface location is orthodox and the producing interval's location is within the tolerance allowed for deviated well bores under Paragraph (3) of Subsection A of 19.15.16.14 NMAC.

C. Additional matters.

(1) Directional surveys that 19.15.16.14 NMAC requires shall have shot points no more than 200 feet apart and shall be run by competent surveying companies that are approved by the director. The division shall allow exceptions to the minimum shot point spacing provided the survey's accuracy is still within acceptable limits.

(2) The director may set an application for administrative approval whereby the operator shall submit appropriate information and give notice as the director requests. The division may approve unprotested applications administratively within 20 days after the division receives the application and supporting information. If the application is protested, or the director decides that a hearing is appropriate, the division may set the application for hearing.

(3) The division shall grant permission to deviate or directionally drill a well bore for any reason or in a manner not provided for in 19.15.16.14 NMAC only after notice and opportunity for hearing.

[19.15.16.14 NMAC - Rp, 19.15.3.111 NMAC, 12/1/08]

19.15.16.15 MULTIPLE COMPLETIONS; BRADENHEAD GAS WELLS:

A. Multiple completions.

(1) Filing. An operator intending to multiple complete shall file form C-101 or C-103 with the division for approval before completing and C-104 after completing along with information required by the form instructions.

(2) Operation and testing.

(a) The operator shall complete and produce wells so that commingling of hydrocarbons from separate pools does not occur.

(b) The operator shall commence a segregation or packer leakage test within 20 days after the multiple completion. The operator shall also make segregation tests or packer leakage tests any time the packer is disturbed. The operator shall conduct other tests and determinations the division requires. The operator shall notify the appropriate division district office 48 hours in advance of tests so the district office may schedule personnel to witness the tests. Offset operators may witness such tests and shall advise the operator in writing if they desire to be notified of the tests. The operator shall file test results with the division within 20 days of test completion. In the event a segregation or packer leakage test indicates communication between separate pools, the operator shall immediately notify the division and commence corrective action on the well.

(c) The operator shall equip wells so that reservoir pressure may be determined for each of the separate pools, and may install meters so that the gas or oil produced from each of the separate pools may be accurately measured.

(d) No multiple completion shall produce in a manner unnecessarily wasting reservoir energy.

(e) The division may require the operator to properly plug a zone of a multiple-completed well if the plugging appears necessary to prevent waste, protect correlative rights or protect ground water, public health or the environment.

B. Bradenhead gas wells.

(1) The division may permit production of gas from a bradenhead gas well only after hearing, except as noted in Paragraph (3) of Subsection B of 19.15.16.15 NMAC.

(2) The operator shall submit the application for a hearing to the division in triplicate and include an exhibit showing the location of wells on applicant's lease and offset wells on offset leases, together with a diagrammatic sketch showing the casing program, formation tops, estimated top of cement on each casing string run and other pertinent data, including drill stem tests.

(3) The director may grant an exception to Subsection A of 19.15.16.15 NMAC's requirements without notice and hearing where the operator files the application in due form, and when the lowermost producing zone involved in the completion is an oil or gas producing zone within an oil or gas pool's defined limits and the producing zone to be produced through the bradenhead connection is a gas producing zone within a gas pool's defined limits. The applicant shall include with the application a written stipulation that the applicant has properly notified offset operators.

(4) The applicant shall furnish operators who offset the lease upon which the subject well is located a copy of the application. The director shall wait at least 10 days before approving gas production from the bradenhead gas well, and shall approve the production only in the absence of an offset operator's objection. If an operator objects to the completion the director shall consider the matter only after proper notice and hearing.

(5) The division may waive the 10-day waiting period requirement if the applicant furnishes the division with the written consent to the production of gas from the bradenhead connection by the offset operators involved.

(6) Subsection B of 19.15.16.15 NMAC shall apply only to wells completed after January 1, 1950 or, in Lea County after February 1, 1937, as bradenhead gas wells.

[19.15.16.15 NMAC - Rp, 19.15.3.112 NMAC, 12/1/08]

19.15.16.16 SHOOTING AND CHEMICAL TREATMENT OF WELLS: If shooting, fracturing or treating a well injures the producing formation, injection interval, casing or casing seat and may create underground waste or contaminate fresh water, the operator shall within five working days notify in writing the division and proceed with diligence to use the appropriate method and means for rectifying the damage. If shooting, fracturing or chemical treating results in the well's irreparable injury the division may require the operator to properly plug and abandon the well.

[19.15.16.16 NMAC - Rp, 19.15.3.113 NMAC, 12/1/08]

19.15.16.17 WELL AND LEASE EQUIPMENT:

A. The operator shall install and maintain christmas tree fittings or wellhead connections in first class condition so that necessary pressure tests may easily be made on flowing wells. On oil wells the christmas tree fittings shall have a test pressure rating at least equivalent to the calculated or known pressure in the reservoir from which production is expected. On gas wells the christmas tree fittings shall have a test pressure equivalent to at least 150 percent of the calculated or known pressure in the reservoir from which production is expected.

B. The operator shall install and maintain valves in good working order to permit pressures to be obtained on both casing and tubing. The operator shall equip each flowing well to control properly the flowing of each well, and in case of an oil well, produce the well into an oil and gas separator of a type the industry generally uses.

[19.15.16.17 NMAC - Rp, 19.15.3.115 NMAC, 12/1/08]

19.15.16.18 LOG, COMPLETION AND WORKOVER REPORTS: Within 20 days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different common source of supply, the operator shall file a completion report with the division on form C-105. For the purpose of 19.15.16.18 NMAC, a hole drilled or cored below fresh water or that penetrates oil- or gas-bearing formations or that an owner drills is presumed to be a well drilled for oil or gas.

[19.15.16.18 NMAC - Rp, 19.15.3.117 NMAC, 12/1/08]

19.15.16.19 ALLOWABLES AND AUTHORIZATION TO TRANSPORT OIL AND GAS:

A. The division may assign an allowable to a newly completed or re-completed well or a well completed in an additional pool or issue an operator authorization to transport oil or gas from the well if the operator:

(1) has filed a complete form C-104;

(2) has provided a sworn and notarized tabulation of all deviation tests the operator has run on the well, and directional surveys with calculated bottom hole location, in accordance with the requirements of 19.15.16.14 NMAC;

(3) has dedicated a standard unit for the pool in which the well is completed, a standard unit has been communitized or pooled and dedicated to the well or the division has approved a non-standard unit; and

(4) is in compliance with Subsection A of 19.15.5.9 NMAC.

B. The allowable the division assigns to an oil well is effective at 7:00 a.m. on the completion date, provided the division receives form C-104 during the month of completion. The date of completion shall be that date when new oil is delivered into the stock tanks. Unless otherwise specified by special pool orders, the allowable the division assigns to a gas well is effective at 7:00 a.m. on the date of connection to a gas transportation facility, as evidenced by an affidavit of connection from the transporter to the division, or the date of receipt of form C-104 by the division, whichever date is later.

[19.15.16.19 NMAC - Rp, 19.15.13.1104 NMAC, 12/1/08]

HISTORY of 19.15.16 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) and

19.15.13 NMAC, Reports (filed 6/17/2004) repealed 12/1/08.

NMAC History:
Those applicable portions of 19.15.3 NMAC, Drilling (Sections 103, 106 - 113, 115, & 117) (filed 10/29/2001) and 19.15.13 NMAC, Reports (Section 1104) (filed 6/17/2004) were replaced by 19.15.16 NMAC, Drilling and Production, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 18 PRODUCTION OPERATING PRACTICES

19.15.18.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.18.1 NMAC - N, 12/1/08]

19.15.18.2 SCOPE: 19.15.18 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.18.2 NMAC - N, 12/1/08]

19.15.18.3 STATUTORY AUTHORITY: 19.15.18 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.18.3 NMAC - N, 12/1/08]

19.15.18.4 DURATION: Permanent.
[19.15.18.4 NMAC - N, 12/1/08]

19.15.18.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.18.5 NMAC - N, 12/1/08]

19.15.18.6 OBJECTIVE: To regulate the production of oil and gas wells within the state in order to prevent waste, protect correlative rights and protect public health and the environment.
[19.15.18.6 NMAC - N, 12/1/08]

19.15.18.7 DEFINITIONS: "Drip" means a liquid hydrocarbon incidentally accumulating in a gas gathering or transportation system.
[19.15.2.7 NMAC - Rp, Subsection A of 19.15.5.314 NMAC, 12/1/08]

19.15.18.8 GAS-OIL RATIO AND PRODUCTION TESTS:

A. An operator shall take a gas-oil ratio test no sooner than 20 days nor later than 30 days following the completion or recompletion of each oil well, if:

(1) the well is a wildcat, or

(2) the well is located in a pool that is not exempt from 19.15.18.8 NMAC's requirements.

B. Provisions of 19.15.18.8 NMAC that are applicable to the pool shall govern wells completed within one mile of the outer boundary of a defined oil pool producing from the same formation. The operator shall report the test results to the division on form C-116 within 10 days following the test's completion. The gas-oil ratio the operator reports shall become effective for proration purposes on the first day of the calendar month following the date they are reported.

C. Each operator shall take an annual gas-oil ratio test of each producing oil well, located within a pool not exempted from the requirements of 19.15.18.8 NMAC, during a period the division prescribes. The division shall establish a gas-oil ratio survey schedule setting forth the period in which operators are to take gas-oil ratio tests for each pool where the division requires a test. The gas-oil ratio test shall be a test the division designates, made by the method and in the manner the division in its discretion may prescribe from time to time.

D. An operator shall file the results of gas-oil ratio tests taken during survey periods with the division on form C-116 not later than the 10th of the month following the close of the survey period for the pool in which the well is located. The gas-oil ratios thus reported shall become effective for proration purposes on the first day of the second month following the survey period's close. Unless the operator files form C-116 within the required time limit, the division shall not assign a further allowable to the affected well until the operator file form C-116.

E. In the case of special tests taken between regular gas-oil ratio surveys, the gas-oil ratio becomes effective for proration purposes upon the date the division receives form C-116 reporting the test results. A special test does not exempt a well from the regular survey.

F. During a gas-oil ratio test, an operator shall not produce a well at a rate exceeding the top proration unit allowable for the pool in which it is located by more than 25 percent.

G. The director may exempt such pools as the director deems proper from the gas-oil ratio test requirements of 19.15.18.8 NMAC. The exemption shall be by division order directed to the operators in the pool being exempted.

H. The director may require annual productivity tests of oil wells in pools exempt from gas-oil ratio tests, during a period the division prescribes. The division shall establish an oil well productivity survey schedule setting forth the period in which productivity tests are to be taken for each pool where the division requires the tests.

I. An operator shall file the results of productivity tests taken during survey periods with the division on form C-116 (with the word "exempt" inserted in the column normally used for reporting gas production) not later than the 10th of the month following the close of the survey period for the pool in which the well is located. Unless the operator files form C-116 within the required time limit, the division shall not assign further allowables to the affected well until the operator files form C-116.

J. In the case of special productivity tests taken between regular test survey periods, which result in a change of allowable assigned to the well, the allowable change shall become effective upon the date the division receives form C-116. A special test does not exempt a well from the regular survey.

K. During the productivity test, an operator shall not produce a well at a rate exceeding the top proration unit allowable for the pool in which it is located by more than 25 percent.
[19.15.18.8 NMAC - Rp, 19.15.5.301 NMAC, 12/1/08]

19.15.18.9 BOTTOM HOLE PRESSURE TESTS: The operator shall make a bottom hole pressure test on the discovery well of a new pool and shall report the results of the test to the division within 30 days after the discovery well's completion. On or before December 1 of each calendar year the division shall designate the months in which operators shall take bottom hole pressure tests in designated pools. The division shall include in the designated list the required shut-in pressure time and datum of tests to be taken in each pool. In the event a newly discovered pool is not included in the division's list, the division shall issue a supplementary bottom hole pressure schedule. Tests the division designates shall only apply to flowing wells in each pool. A person qualified by both training and experience to make such test shall make the test with an approved bottom hole pressure instrument that is calibrated

against an approved dead-weight tester at intervals frequent enough to ensure its accuracy within one percent. Unless the division otherwise designates, all wells shall remain completely shut in for at least 24 hours prior to the test. In the event the division does not establish a definite datum the operator shall obtain the bottom hole determination as close as possible to the midpoint of the reservoir's productive sand. The operator shall report the test results to the division on form C-124, which shall contain the information required by Subsection B of 19.15.7.32 NMAC.
[19.15.18.9 NMAC - Rp, 19.15.5.302 NMAC, 12/1/08]

19.15.18.10 CONTROL OF MULTIPLE COMPLETED WELLS: The operator shall at all times operate, produce and maintain multiple completed wells that the division has authorized in a manner to ensure the complete segregation of the various common sources of supply. The division may require the operator take tests the division deems necessary to determine the effectiveness of segregation of the different common sources of supply.
[19.15.18.10 NMAC - Rp, 19.15.5.304 NMAC, 12/1/08]

19.15.18.11 METERED CASINGHEAD GAS: The owner of a lease is not required to measure the exact amount of casinghead gas the owner produces and uses for fuel purposes in the lease's development and normal operation. The owner of the lease shall meter and report casinghead gas produced and sold or transported away from a lease, except small amounts of flare gas, in cubic feet monthly to the division. The owner of the lease may calculate the amount of casinghead gas sold in small quantities for use in the field upon a basis generally acceptable in the industry, or upon a basis approved by the division in lieu of meter measurements.
[19.15.18.11 NMAC - Rp, 19.15.5.305 NMAC, 12/1/08]

19.15.18.12 CASINGHEAD GAS:

A. An operator shall not flare or vent casinghead gas produced from a well after 60 days following the well's completion.

B. An operator seeking an exception to Subsection A of 19.15.18.12 NMAC shall file an application for an exception on form C-129 with the appropriate division district office. The district supervisor may grant an exception when the flaring or venting casinghead gas appears reasonably necessary to protect correlative rights, prevent waste or prevent undue hardships on the applicant. The district supervisor shall either grant the exception within 10 days after the application's receipt or refer it to the director who shall advertise the matter for public hearing if the applicant desires a hearing.

C. The division shall suspend the allowable assigned to the well if the operator flares or vents gas from a well in violation of 19.15.18.12 NMAC.

D. No extraction plant processing gas in the state shall flare or vent casinghead gas unless flaring or venting is made necessary by mechanical difficulty of a very limited temporary nature or unless the gas flared or vented is of no commercial value.

E. In the event of a more prolonged mechanical difficulty or in the event of plant shut-downs or curtailment because of scheduled or non-scheduled maintenance or testing operations or other reasons, or in the event a plant is unable to accept, process and market all of the casinghead gas produced by wells connected to its system, the plant operator shall notify the division as soon as possible of the full details of the shut-down or curtailment, following which the division shall take such action as is necessary to reduce the total flow of gas to the plant.

F. Pending connection of a well to a gas-gathering facility, or when a well has been excepted from the provisions of Subsection A of 19.15.18.12 NMAC, the operator shall burn all gas produced and not used, and report the estimated volume on form C-115.

G. The provisions of Subsection A of 19.15.18.12 NMAC do not apply to wells completed prior to January 1, 1971, in pools that had no gas-gathering facilities on that date, provided however the provisions shall apply to all wells in such a pool 60 days after the date of first casinghead gas connection in the pool.
[19.15.18.12 NMAC - Rp, 19.15.5.306 NMAC, 12/1/08]

19.15.18.13 OPERATION AT BELOW ATMOSPHERIC PRESSURE:

A. An operator may use vacuum pumps, gathering system compressors or other devices to operate a well or gathering system at below atmospheric pressure only if that operator has:

(1) executed a written agreement with the operator of the downstream gathering system or pipeline to which the well or gathering system so operated is immediately connected allowing operation of the well or gathering system at below atmospheric pressure; and

(2) filed a sundry notice in the appropriate division district office for each well operated at below atmospheric pressure or served by a gathering system operated at below atmospheric pressure, within 90 days before beginning operation at below atmospheric pressure, notifying the division that the well or gathering system serving the well is being operated at below atmospheric pressure.

B. A gathering system operator may use vacuum pumps, gathering system compressors or other devices to operate a gathering system at below atmospheric pressure, or may accept gas originating from a well operated at below atmospheric pressure or that has been carried by an upstream gathering system operated at below atmospheric pressure, only if that operator has executed a written agreement with the operator of the downstream gathering system or pipeline to which the gathering system is immediately connected allowing delivery of gas from a well or gathering system that has been operated at below atmospheric pressure into the downstream gathering system or pipeline.
[19.15.18.13 NMAC - Rp, 19.15.5.307 NMAC, 12/1/08]

19.15.18.14 SALT OR SULPHUR WATER: An operator shall report monthly on form C-115 the amount of water produced with the oil and gas from each well.
[19.15.18.14 NMAC - Rp, 19.15.5.308 NMAC, 12/1/08]

19.15.18.15 AUTOMATIC CUSTODY TRANSFER EQUIPMENT:

A. Oil shall be received and measured in facilities of an approved design. The facilities shall permit the testing of each well at reasonable intervals and may be comprised of manually gauged, closed stock tanks for which the operator of the ACT system has prepared proper strapping tables, or of ACT equipment. The division shall permit ACT equipment's use only after the operator complies with the following. The operator shall file with the division form C-106 and receive approval for use of the ACT equipment prior to transferring oil through the ACT system. The carrier shall not accept delivery of oil through the ACT system until the division has approved form C-106.

B. The operator of the ACT system shall submit form C-106 to the appropriate division district office, which is accompanied by the following:

(1) plat of the lease showing all wells that the any well operator will produce into the ACT system;

(2) schematic diagram of the ACT equipment, showing on the diagram all major components such as surge tanks and their capacity, extra storage tanks and their capacity, transfer pumps, monitors, reroute valves, treaters, samplers, strainers, air and gas eliminators, back pressure valves and metering devices (indicating type and capacity, *i.e.* whether automatic measuring tank, positive volume metering chamber, weir-type measuring vessel or positive dis-

placement meter); the schematic diagram shall also show means employed to prove the measuring device's accuracy; and

(3) letter from transporter agreeing to utilization of ACT system as shown on schematic diagram.

C. The division shall not approve form C-106 unless the operator of the ACT system will install and operate the ACT system in compliance with the following requirements.

(1) Provision is made for accurate determination and recording of uncorrected volume and applicable temperature, or of temperature corrected volume. The system's overall accuracy shall equal or surpass manual methods.

(2) Provision is made for representative sampling of the oil transferred for determination of API gravity and BS&W content.

(3) Provision is made if required by either the oil's producer or the transporter to give adequate assurance that the ACT system runs only merchantable oil.

(4) Provision is made for set-stop counters to stop the flow of oil through the ACT system at or prior to the time the allowable has been run. Counters shall provide non-reset totalizers that are visible for inspection at all times.

(5) Necessary controls and equipment are enclosed and sealed, or otherwise arranged to provide assurance against, or evidence of, accidental or purposeful mismeasurement resulting from tampering.

(6) The ACT system's components are properly sized to ensure operation within the range of their established ratings. All system components that require periodic calibration or inspection for proof of continued accuracy are readily accessible; the frequency and methods of the calibration or inspection shall be as set forth in Paragraph (12) of Subsection C of 19.15.18.15 NMAC.

(7) The control and recording system includes adequate fail-safe features that provide assurance against mismeasurement in the event of power failure, or the failure of the ACT system's component parts.

(8) The ACT system and allied facilities include fail-safe equipment as may be necessary, including high level switches in the surge tank or overflow storage tank that, in the event of power failure or malfunction of the ACT or other equipment, will shut down artificially lifted wells connected to the ACT system and will shut in flowing wells at the well-head or at the header manifold, in which latter case the operator of the ACT system shall pressure test all flowlines to at least 1½ times the maximum well-head shut-in pressure prior to the ACT system's initial use and every two years thereafter.

(9) As an alternative to the requirements of Paragraph (8) of Subsection C of 19.15.18.15 NMAC the producer shall provide and at all times maintain a minimum of available storage capacity above the normal high working level of the surge tank to receive and hold the amount of oil that may be produced during maximum unattended time of lease operation.

(10) In all ACT systems employing automatic measuring tanks, weir-type measuring vessels, positive volume metering chambers or any other volume measuring container, the container and allied components shall be properly calibrated prior to initial use and shall be operated, maintained and inspected as necessary to ensure against incrustation, changes in clingage factors, valve leakage or other leakage and improper action of floats, level detectors, etc.

(11) In ACT systems employing positive displacement meters, the meter and allied components shall be properly calibrated prior to initial use and shall be operated, maintained and inspected as necessary to ensure against oil mismeasurement.

(12) The operator of the ACT system shall check the measuring and recording devices of ACT systems for accuracy at least once each month unless it has obtained an exception to such determination from the division. Where applicable, the operator of the ACT system shall use API standard 1101, Measurement of Petroleum Hydrocarbons by Positive Displacement Meter. Meters may be proved against master meters, portable prover tanks or prover tanks permanently installed on the lease. If the operator of the ACT system uses permanently installed prover tanks, the distance between the opening and closing levels and the provision for determining the opening and closing readings shall be sufficient to detect variations of 5/100 of one percent. The operator of the ACT system shall file reports of determination on the division form entitled "meter test report" or on another acceptable form in duplicate with the appropriate division district office.

(13) To obtain an exception to the requirement in Paragraph (12) of Subsection C of 19.15.18.15 NMAC that all measuring and recording devices be checked for accuracy once each month, either the producer or transporter may file a request with the director setting forth facts pertinent to the exception. The application shall include a history of the average factors previously obtained, both tabulated and plotted on a graph of factors versus time, showing that the particular installation has experienced no erratic drift. The applicant shall also furnish evidence that the other interested party has agreed to the exception. The director may then set the frequency for determination of the system's accuracy at the interval which the director deems prudent.

D. The division may revoke its approval of an ACT system's form C-106 if the system's operator fails to operate it in compliance with 19.15.18.15 NMAC.

[19.15.18.15 NMAC - Rp, 19.15.5.309 NMAC, 12/1/08]

19.15.18.16 TANKS, OIL TANKS, FIRE WALLS AND TANK IDENTIFICATION:

A. No person shall store or retain oil in earthen reservoirs or in open receptacles. Dikes or fire walls are not required except an operator shall erect and maintain fire walls around permanent oil tanks or tank batteries that are within the corporate limits of a city, town or village, or where such tanks are closer than 150 feet to a producing oil or gas well or 500 feet to a highway or inhabited dwelling or closer than 1000 feet to a school or church, or where the tanks are so located that the division deems them an objectional hazard. Where fire walls are required, fire walls shall form a reservoir having a capacity one-third larger than the capacity of the enclosed tank or tanks.

B. The operator shall identify oil tanks, tank batteries, ACT systems, tanks used for salt water collection or disposal and tanks used for sediment oil treatment or storage by a sign posted on or not more than 50 feet from the tank, tank battery or system. The sign shall be of durable construction and the operator shall keep the lettering on the sign in a legible condition; the lettering shall be large enough to be legible under normal conditions at a distance of 50 feet and the sign shall identify the operator's name, the name of the lease being served by the tank or system, if any, and the location of the tank or system by unit letter, section, township and range.

[19.15.18.16 NMAC - Rp, 19.15.5.310 NMAC, 12/1/08]

19.15.18.17 SEDIMENT OIL, TANK CLEANING AND TRANSPORTATION OF MISCELLANEOUS HYDROCARBONS:

A. No person shall clean a tank of sediment oil or remove sediment oil from a lease without the appropriate division district office's prior approval. The lease operator or the company contracted or otherwise authorized to perform the tank cleaning may receive authorization for tank cleaning by obtaining division approval on form C-117-A. No operator, contractor or other party shall clean a tank of sediment oil or remove sediment oil from a lease without an approved copy of form C-117-A at the

site.

B. No person shall destroy sediment oil without the appropriate division district office's approval of an application to destroy the sediment oil on form C-117-A. Unless a person receiving an authorization to destroy sediment oil utilizes the authorization to destroy sediment oil within 10 days after division approval of the form C-117-A the authorization is automatically revoked. However, the district supervisor may approve one 10 day extension for good cause shown.

C. A person, other than a treating plant operator, who cleans a tank of sediment oil and removes sediment oil from a lease shall file form C-117-B with the division setting out all information the form requires.

D. A person taking possession of or disposing of sediment oil shall test a representative sample of sediment oil in a manner designed to accurately estimate the percentage of good oil expected to be recovered from the sediment oil. The person shall perform the test prior to transport and prior to commingling with sediment oil from other leases or sources and record the results on form C-117-A. The division recommends the standard centrifugal tests prescribed by API publication Sediment and Water, Sect: 4: Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure), MPMS 10.4. The person may use other test procedures if the procedures reliably predict the percentage of good oil to be recovered from sediment oil.

E. A person taking possession of or disposing of sediment oil shall report sediment oil removed from storage on form C-115 together with the form C-117-A permit number.

F. Except in an emergency, no person shall deliver miscellaneous hydrocarbons to a treating plant or other facility until that person has obtained division approval on form C-117-A.

G. Whenever an emergency exists that requires delivery of miscellaneous hydrocarbons to a treating plant or other facilities prior to approval of form C-117-A, the transporter of the hydrocarbons shall notify the supervisor of the appropriate division district office of the emergency's nature and extent on the first working day following the emergency and shall file form C-117-A within two working days following the emergency. For prolonged emergencies, the district supervisor may authorize the extended movement of miscellaneous hydrocarbons to a treating plant or other facilities during the emergency period and shall approve a form C-117-A filed subsequent to the emergency's conclusion covering the entire volume of miscellaneous hydrocarbons transported.

[19.15.18.17 NMAC - Rp, 19.15.5.311 NMAC, 12/1/08]

19.15.18.18 EMULSION, BASIC SEDIMENTS AND TANK BOTTOMS: The operator shall operate wells producing oil in a manner that reduces as much as practicable the formation of emulsion and basic sediments. No person shall allow these substances and tank bottoms to pollute fresh waters or cause surface damage.
[19.15.18.18 NMAC - Rp, 19.15.5.313 NMAC, 12/1/08]

19.15.18.19 GATHERING, TRANSPORTING AND SALE OF DRIP:

A. The waste of drip is prohibited when it is economically feasible to salvage the drip.

B. A person may move and sell drip, provided it complies with 19.15.18.19 NMAC.

C. A person shall not transport or sell drip until the gas transporter files form C-104 designating the drip transporter authorized to remove the drip from its gas gathering or transportation system.

D. Each month, a person transporting drip within the state shall complete and maintain for division inspection form C-112, showing the amount, source and disposition of drip handled during the reporting period, and such other reports as the division may require.

E. Prior to commencement of operations, every person transporting drip directly from a gas gathering or transportation system shall file with the division plats drawn to scale, locating and identifying each drip trap that the person is authorized to service.

F. A person transporting drip directly from a gas gathering or transportation system shall keep a record of daily acquisitions from each drip trap that the person is authorized to service and make the records available at all reasonable times for inspection by the division or its authorized representatives.

G. A gas transporter shall, on or before the first day of November of each year, file with the division maps of its entire gas gathering and transportation systems, locating and identifying on the map each drip trap in the systems, the maps to be accompanied by a report, on a division-prescribed form, showing the disposition being made of the drip from each of the drip traps.
[19.15.18.19 NMAC - Rp, 19.15.5.314 NMAC, 12/1/08]

HISTORY of 19.15.18 NMAC:

History of Repealed Material: 19.15.5 NMAC, Oil Production Operating Practices (filed 04/27/2000) repealed 12/1/08.

NMAC History:
Those applicable portions of 19.15.5 NMAC, Oil Production Operating Practices Sections 301, 302, 304 - 311, 313 & 314) (filed 04/27/2000) were replaced by 19.15.18 NMAC, Production Operating Practices, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 19 NATURAL GAS PRODUCTION OPERATING PRACTICE

19.15.19.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.19.1 NMAC - Rp, 19.15.6.1 NMAC, 12/1/08]

19.15.19.2 SCOPE: 19.15.19 NMAC applies to persons engaged in gas development and production within New Mexico.
[19.15.19.2 NMAC - Rp, 19.15.6.2 NMAC, 12/1/08]

19.15.19.3 STATUTORY AUTHORITY: 19.15.19 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.19.3 NMAC - Rp, 19.15.6.3 NMAC, 12/1/08]

19.15.19.4 DURATION: Permanent.
[19.15.19.4 NMAC - Rp, 19.15.6.4 NMAC, 12/1/08]

19.15.19.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.19.5 NMAC - Rp, 19.15.6.5 NMAC, 12/1/08]

19.15.19.6 OBJECTIVE: To regulate the gas production within the state in order to prevent waste, protect correlative rights and protect public health and the environment.

[19.15.19.6 NMAC - Rp, 19.15.6.6 NMAC, 12/1/08]

19.15.19.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.19.8 METHOD OF DETERMINING GAS WELL POTENTIAL:

A. An operator shall conduct tests to determine the daily open flow potential volumes of gas wells from which gas is being used or marketed. The operator shall report the tests on division-prescribed forms within 60 days after

(1) the date of the well's initial connection to a gas transportation facility; and

(2) the date of reconnection following workover.

B. To establish comparable open flow capacity, the operator shall test wells in accordance with the division's Manual for back-pressure testing of natural gas wells. If the division approves the alternate method for testing, the operator shall test all wells producing from a common source of supply in a uniform and comparable manner.

C. The operator of a gas well that is not connected to a gas gathering facility shall test the well within 30 days following a christmas tree's installation. The operator shall take the tests in accordance with the procedure for testing unconnected gas well contained in the division's *manual for back-pressure testing of natural gas wells*. The operator shall report the tests on form C-122 in compliance with 19.15.7.31 NMAC and file it within 10 days following the test's completion.
[19.15.19.8 NMAC - Rp, 19.15.6.401 NMAC, 12/1/08]

19.15.19.9 GAS FROM GAS WELLS TO BE MEASURED:

A. The transporter of gas produced shall account for the gas by metering or other division-approved method and report it to the division. The owner or operator of the gas transportation facility shall report gas produced from a gas well and delivered to a gas transportation facility. The well operator shall report gas produced from a gas well and required to be reported by 19.15.19.9 NMAC that is not delivered to and reported by a gas transportation facility.

B. An operator may apply to the district supervisor, using form C-136, for approval of one of the following procedures for measuring gas.

(1) In the event a well is not capable of producing more than 15 MCFD, a measurement method agreed upon by the operator and transporter whereby the parties establish by annual test the producing rate of the well under normal operating conditions and apply that rate to the period of time the well is in a producing status. If the well is capable of producing greater than five MCFD, the transporter shall attach a device to the line that determines the actual time period that the well is flowing.

(2) An operator may produce a well that has a producing capacity of 100 MCFD or less and that is on a multi-well lease without the well being separately metered when the gas is measured using a lease meter at a CPD. The lease's ownership shall be common throughout including working interest, royalty and overriding royalty ownership.

(3) If normal operating conditions change, either party may request a new well test, the cost of which the party requesting the new well test shall bear unless the parties otherwise agree.

C. The operator and transporter shall report the well volumes on forms C-115 and C-111 based upon the approved method of measurement and, in the case of a CPD, upon the method of allocation of production to individual wells the district supervisor approves.
[19.15.19.9 NMAC - Rp, 19.15.6.403 NMAC, 12/1/08]

19.15.19.10 GAS UTILIZATION: After the completion of a gas well, the operator shall not permit gas from the well to escape to the air, use the gas expansively in engines or pumps and then vent or use the gas to gas-lift wells unless all gas produced is processed in a gasoline plant or beneficially used thereafter without waste.
[19.15.19.10 NMAC - Rp, 19.15.6.404 NMAC, 12/1/08]

19.15.19.11 STORAGE GAS: With the exception of the requirement to meter and report monthly the amount of gas injected and the amount of gas withdrawn from storage, in the absence of waste 19.15.19 NMAC shall not apply to gas being injected into or removed from storage. (See 19.15.7.40 NMAC)
[19.15.19.11 NMAC - Rp, 19.15.6.405 NMAC, 12/1/08]

19.15.19.12 CARBON DIOXIDE: The rules relating to gas, gas wells and gas reservoirs including those provisions relating to well locations, acreage dedication requirements, casing and cementing requirements and measuring and reporting of production also apply to carbon dioxide gas, carbon dioxide wells and carbon dioxide reservoirs.
[19.15.19.12 NMAC - Rp, 19.15.6.406 NMAC, 12/1/08]

19.15.19.13 DISCONNECTION OF GAS WELLS: The operator shall report gas wells that are disconnected from intrastate gas transportation facilities to the division within 30 days of the date of disconnection. The operator shall file the notice on form C-130 in compliance with 19.15.7.39 NMAC.
[19.15.19.13 NMAC - Rp, 19.15.6.407 NMAC, 12/1/08]

HISTORY of 19.15.19 NMAC:

History of Repealed Material: 19.15.6 NMAC, Natural Gas Production Operating Practice (filed 11/29/2001) repealed 12/1/08.

NMAC History:
Those applicable portions of 19.15.6 NMAC, Natural Gas Production Operating Practice (Sections 401, and 403 - 407) (filed 11/29/2001) were replaced by 19.15.19 NMAC, Natural Gas Production Operating Practice, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 20 OIL PRORATION AND ALLOCATION

19.15.20.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.20.1 NMAC - Rp, 19.15.7.1 NMAC, 12/1/08]

19.15.20.2 SCOPE: 19.15.20 NMAC applies to persons engaged in oil development and production within New Mexico.
[19.15.20.2 NMAC - Rp, 19.15.7.2 NMAC, 12/1/08]

19.15.20.3 STATUTORY AUTHORITY: 19.15.20 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-16 and Section 70-2-17.
[19.15.20.3 NMAC - Rp, 19.15.7.3 NMAC, 12/1/08]

19.15.20.4 DURATION:

Permanent.
[19.15.20.4 NMAC - Rp, 19.15.7.4 NMAC, 12/1/08]

19.15.20.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.20.5 NMAC - Rp, 19.15.7.5 NMAC, 12/1/08]

19.15.20.6 OBJECTIVE: To establish requirements implementing the division's statutory authority to prorate and allocate oil production.
[19.15.20.6 NMAC - Rp, 19.15.7.6 NMAC, 12/1/08]

19.15.20.7 DEFINITIONS:

A. "Date of completion" means the date when new oil is delivered into the stock tanks.

B. "Marginal unit" means a proration unit that is incapable of producing the top proration unit allowable for the pool in which it is located as evidenced by well tests, production history or other report or form the operator files with the division.

C. "Non-marginal unit" means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located and to which the division has assigned a top proration unit allowable.

D. "Recovered load oil" means oil or liquid hydrocarbon that has been used in an operation in an oil or gas well, and that has been recovered as a merchantable product.
[19.15.20.7 NMAC - Rp, 19.15.7.7 NMAC, Subsection D of 19.15.7.503 NMAC and Subsection B of 19.15.7.508 NMAC, 12/1/08]

19.15.20.8 REGULATION OF OIL POOLS:

A. To prevent waste, the division shall prorate and distribute the allowable production among the producers in a pool upon a reasonable basis and recognizing correlative rights.

B. After notice and hearing, the division, in order to prevent waste and protect correlative rights, may enter special orders pertaining to a pool.
[19.15.20.8 NMAC - Rp, 19.15.7.501 NMAC, 12/1/08]

19.15.20.9 RATE OF PRODUCING WELLS:

A. Daily tolerance.

(1) Oil wells located on units capable of producing their allowables may overproduce one day and underproduce another. No unit capable of producing its allowable, except for the purpose of testing, in the process of completing or recompleting a well or for tests made for the purpose of obtaining scientific data, shall produce any day more than 125 percent of the daily top proration unit allowable for the pool in which the well is located. (Subject to the foregoing, an underproduction may be made up by production from the same unit within the same month, and in like manner any overproduction shall be adjusted or balanced by underproduction from the same unit, within the same proration period).

(2) Certain wells must, as a matter of practicality, be produced at daily rates in excess of 125 percent of the daily top proration unit allowable for the pool in which the wells are located. The director may grant exceptions to the provisions of Paragraph (1) of Subsection A of 19.15.20.9 NMAC, without formal hearing, where an operator has filed application setting out the reasons for the requested exception.

(a) Applicants for the exceptions shall, at the time of filing, furnish each operator in the pool in which the well is located a copy of the application.

(b) The applicant shall include in an application for exception or attach to the application a formal written statement that the applicant has served every operator in the pool in which the well is located with a copy of the application.

(3) The director shall wait at least 10 days after receipt before approving the application, and shall approve the application only in absence of objection from an operator or interested party, or in the director's discretion. In the event the director fails to approve the application, the division after notice shall hear and determine the matter.

B. Monthly tolerance. No unit shall produce during any one proration period more than the unit's allowable production for the proration period plus a tolerance of not to exceed five days allowable production. This permissive tolerance of overproduction from a unit is subject to all other provisions of 19.15.20.9 NMAC and particularly to the provisions of Subsection D of 19.15.20.9 NMAC. The operator shall adjust or balance permissive tolerance of overproduction from a unit by subsequent corresponding underproduction from the same unit. The division shall consider overproduction within the permitted tolerance as oil produced against the allowable production assigned to the unit for the proration period during which the overproduction is adjusted or balanced by underproduction.

C. Production in excess of monthly allowable, plus tolerance.

(1) Oil produced from a unit in excess of the assigned monthly allowable plus the permissive proration period tolerance shall be "illegal oil" as defined in the Oil and Gas Act, unless the excess oil:

(a) is produced as a result of mistake or error;

(b) results from mechanical failure beyond the operator's immediate control; or

(c) results from essential tests of the unit within the purview of division rules.

(2) Whenever production from a unit for a proration period exceeds the assigned allowable, plus the permitted tolerance authorized in Subsection B of 19.15.20.9 NMAC and the cause of the excess reasonably falls within Subparagraphs (a), (b) or (c) of Paragraph (1) of Subsection C of 19.15.20.9 NMAC, the producer or operator shall briefly set forth the excess production's cause together with a proposed plan for production adjustment in the comments area of form C-115 for the month in which the excess production occurs. The excess production shall be considered as oil produced against the allowable assigned to the unit for the following proration period, and it may be transported from the lease tanks only as and when the unit accrues daily allowable to offset the excess production.

D. General.

(1) The tolerance permitted on a daily or monthly basis as provided in Subsections A and B of 19.15.20.9 NMAC does not increase a producing unit's allowable or grant an operator authority to market or a transporter authority to transport any quantity of oil in excess of the unit's allowable.

(2) The possession of a quantity of oil in lease storage at the end of a proration period in excess of five days allowable plus any rerun allowable oil is a violation of 19.15.20.9 NMAC, unless the operator reports the possession in the manner and within the time provided in Subsection C of 19.15.20.9 NMAC for filing form C-115.

E. Storage records. Producers and transporters of oil shall maintain adequate records showing unrun allowable oil in storage at the end of each proration period. The storage oil shall be the amount of oil in tanks from which oil is measured and delivered to the transporter.
[19.15.20.9 NMAC - Rp, 19.15.7.502 NMAC, 12/1/08]

19.15.20.10 AUTHORIZATION FOR PRODUCTION OF OIL:

A. Except as provided below, the daily top proration unit allowable for an oil pool is 100 percent of the depth bracket allowable for the pool determined pursuant to 19.15.20.12 NMAC.

B. The division may, within five days prior to the end of the month, determine the likelihood the total producing capacity of all oil wells in the state exceeding anticipated reasonable market demand for oil from the state. If the division determines that the capacity may exceed the

anticipated reasonable market demand, and that a market demand factor of less than 100 percent may be necessary to prevent waste, it shall immediately institute proper proceedings for a hearing to be held before the 20th day of the following month to determine actual reasonable market demand up to a maximum of six months.

C. At the hearing the division shall consider all evidence of market demand for oil from this state, and if it determines that the market demand percentage factor should be less than 100 percent, issue an order establishing the market demand factor and set a date for the next market demand hearing.

D. The division shall multiply the market demand factor established by the applicable depth bracket allowable for each well and each pool to determine its unit allowable. A fraction of a barrel is regarded as a full barrel in determining top proration unit allowable. Upon initial establishment of a market demand factor, and from time to time thereafter, the division shall issue a proration schedule authorizing the production of oil from the various proration units in the various pools in the state. A well completed or recompleted after the schedule's issuance and for which the division has approved form C-104, shall, by supplement to the schedule, be authorized a daily allowable equal to the top proration unit allowable in effect. The allowable for the well is effective at 7:00 a.m. on the date of the completion, provided the operator submits form C-104 and the division approves the form within 10 days following the completion date; otherwise the allowable is effective on the date the division approves the form C-104.

E. A non-marginal unit may produce the top proration unit allowable without waste and subject to the provisions of 19.15.18.7 NMAC, 19.15.20.9 NMAC and 19.15.20.13 NMAC and all other applicable rules.

F. A marginal unit may produce any amount of oil that it is capable of producing without waste up to the pool's top proration unit allowable, subject to the provisions of 19.15.18.7 NMAC, 19.15.20.9 NMAC and 19.15.20.13 NMAC and all other applicable rules if the division has assigned an allowable to the unit to authorize the production.

G. A penalized non-marginal unit is a proration unit to which, because of an excessive gas-oil ratio, the division has assigned an allowable determined in accordance with the procedure in 19.15.20.13 NMAC. In calculating a penalized allowable, a fraction of a barrel is regarded as a full barrel.

H. The division shall make and distribute a periodic tabulation of all supplements to the current proration schedule.

I. The division shall adhere to 19.15.15.14 NMAC in fixing top proration unit allowables.

J. If it becomes necessary for an oil transporter to resort to pipeline proration, the transporter shall, as soon as possible and not later than 24 hours after the effective date of the pipeline proration, notify the division of its decision to prorate. Upon receipt of the notice from the transporter, the division may take such emergency action as it deems proper or upon its own motion, after notice, hold a hearing for the purpose of considering any action within its authority to preserve and protect correlative rights.

K. In case of pipeline proration an operator the pipeline proration affects may apply to the division for authorization to have an underproduction resulting from the pipeline proration included in subsequent proration schedules. The operator shall apply upon a division-prescribed form and file it with the division within 30 days after the close of the first proration period in which the pipeline proration underproduction occurred. The authorization is limited to wells capable of producing the daily top proration unit allowable for the period.

L. In approving the application the division shall determine the time period during which the underproduction shall be made up without injury to the well or pool, and shall include the time period in the regularly approved proration schedules following the pipeline proration's conclusion.

[19.15.20.10 NMAC - Rp, 19.15.7.503 NMAC, 12/1/08]

19.15.20.11 AUTHORIZATION FOR PRODUCTION OF OIL WHILE COMPLETING, RECOMPLETING OR TESTING AN OIL WELL:

A. If an operator does not have sufficient lease storage to hold oil produced from a well during its drilling, completing, recompleting or testing, the operator may produce and sell from the well an amount of oil necessary to drill, complete, recomplete or test the well; provided however, that the operator shall file with the division a written application stating the circumstances at the well and setting forth in the application the estimated amount of oil to be produced during the aforementioned operations, and provided further that the division approves the application. Oil produced during drilling, completion or recompletion or testing a well shall be charged against the well's allowable production.

B. The division shall not place a well on the proration schedule until the operator files with the division and the division approves the form C-104.

[19.15.20.11 NMAC - Rp, 19.15.7.504 NMAC, 12/1/08]

19.15.20.12 DEPTH BRACKET ALLOWABLES:

A. Subject to the market demand percentage factor determined pursuant to 19.15.20.10 NMAC, the daily oil allowable for each oil pool in the state shall equal the appropriate depth bracket allowable below. The depth of the casing shoe or the top perforation in the casing, whichever is higher, in the first well completed in the pool shall determine the pool's depth classification. Daily oil allowables for each of the several ranges of depth and spacing patterns are as follows, shown in barrels:

POOL DEPTH RANGE	DEPTH BRACKET ALLOWABLE		
	40 Acres	80 Acres	160 Acres
0 to 4999 feet	80	160	
5000 to 5999	107	187	347
6000 to 6999	142	222	382
7000 to 7999	187	267	427
8000 to 8999	230	310	470
9000 to 9999	275	355	515
10,000 to 10,999	320	400	560
11,000 to 11,999	365	445	605
12,000 to 12,999	410	490	650
13,000 to 13,999	455	535	695
14,000 to 14,999	500	580	740
15,000 to 15,999	545	625	785
16,000 to 16,999	590	670	830
17,000 and deeper	635	715	875

B. The 40-acre depth bracket allowables apply to all undesignated wells not governed by special pool orders and to all pools developed on the normal 40-acre statewide spacing unit.

C. The 80-acre and 160-acre depth bracket allowables apply to wells governed by applicable special pool orders the division issues as an exception to the normal 40-acre statewide spacing unit.

D. The division may, where deemed appropriate, assign to a given pool a special depth bracket allowable at variance to the depth bracket allowable normally assigned to a pool of similar depth and spacing. The special allowable may be more or less than the regular depth bracket allowable and shall be assigned only after notice and hearing.

E. In assigning a lesser than regular depth bracket allowable, the division may consider, among other pertinent factors, reservoir damage, casinghead gas production and disposition, water production and disposition, transportation facilities, the prevention of surface or underground waste and the protection of correlative rights.

F. The division shall assign a greater than regular depth bracket allowable only after sufficient reservoir information is available to ensure that the allowable can be produced without damage to the reservoir and without causing surface or underground waste. The division shall also consider the availability of oil transportation and marketing facilities; casinghead gas transportation, processing and marketing facilities; water disposal facilities; the protection of correlative rights; and other pertinent factors.

[19.15.20.12 NMAC - Rp, 19.15.7.505 NMAC, 12/1/08]

19.15.20.13 GAS-OIL RATIO LIMITATION:

A. In allocated pools containing a well or wells producing from a reservoir that contains both oil and gas, each proration unit shall produce only that volume of gas equivalent to the applicable limiting gas-oil ratio multiplied by the pool's top unit oil allowable. In the event the division has not set a gas-oil ratio limit for a particular oil pool, the limiting gas-oil ratio shall be 2000 cubic feet of gas for each barrel of oil produced. In allocated oil pools the division shall place all producing wells, whether oil or casinghead gas, on the oil proration schedule.

B. Unless specifically exempted by division order issued after hearing, the division shall place a gas-oil ratio limitation on all allocated oil pools, and penalize all proration units having a gas-oil ratio exceeding the pool's limit in accordance with the following procedure.

(1) A proration unit that, on the basis of the latest official gas-oil ratio test, has a gas-oil ratio that exceeds the limiting gas-oil ratio and has the capacity to produce above the top casinghead gas volume calculated by Subsection A of 19.15.20.13 NMAC for the pool in which it is located may produce daily that number of barrels of oil that the division determines by multiplying the current top proration unit allowable by a fraction, the numerator of which shall be the limiting gas-oil ratio for the pool and the denominator of which shall be the well's official test gas-oil ratio, and the proration unit shall be designated non-marginal.

(2) A unit containing a well or wells producing from a reservoir that contains both oil and gas shall produce only that volume of gas equivalent to the applicable limiting gas-oil ratio multiplied by the top proration unit allowable currently assigned to the pool.

(3) A marginal unit may produce the same volume of gas that it would be permitted to produce if it were a non-marginal unit.

C. The division shall indicate non-marginal proration units to which gas-oil ratio adjustments are applied in the proration schedule with adjusted allowables stated.

D. In cases of new pools, the limit shall be 2000 cubic feet per barrel until such time as changed by division order issued after a hearing. Upon petition and after notice and hearing according to law, the division shall determine or redetermine the specific gas-oil ratio limit that is applicable to a particular allocated oil pool.

[19.15.20.13 NMAC - Rp, 19.15.7.506 NMAC, 12/1/08]

19.15.20.14 UNITIZED AREAS: After petition and notice and hearing, the division may approve the combining of contiguous developed proration units into a unitized area.

[19.15.20.14 NMAC - Rp, 19.15.7.507 NMAC, 12/1/08]

19.15.20.15 RECOVERED LOAD OIL:

A. An operator may run recovered load oil from the lease on which it is recovered, provided the operator obtains division approval of form C-126. The operator shall file form C-126 with the appropriate division district office. Upon approval, the division shall return one copy to the operator and send one copy to the designated transporter as authority to transport the oil.

B. 19.15.20.15 NMAC applies only to oil that has been obtained from a source other than the lease on which it is used.

[19.15.20.15 NMAC - Rp, 19.15.7.508 NMAC, 12/1/08]

19.15.20.16 OIL DISCOVERY ALLOWABLE:

A. In addition to the normally assigned allowable, the division may assign an oil discovery allowable to a well completed as a bona fide discovery well in a new common source of supply. The oil discovery allowable shall be in the amount of five barrels for each foot of depth of the well from the surface of the ground to the top of the perforations in the new pool or the depth of the casing shoe, whichever is higher. In counties where there is no other current oil production, and in a county when the discovery is the deepest oil production in the county, the oil discovery allowable shall be 10 barrels per foot of depth.

B. The date of discovery the division uses to determine the well that should properly receive the oil discovery allowable for a new pool is the date the operator completes the well and runs new oil into stock tanks. Provided however, an operator drilling through and discovering a new oil pool in the course of drilling to a lower horizon may file an affidavit of the discovery within seven days after making drill stem tests of the pool, accompanying the affidavit with all available pool data. If, prior to the well's completion, another operator claims discovery of a similar pool and there are reasonable grounds to believe the pools are one and the same, the division shall not assign a discovery allowable to either well until after the initial well for which the affidavit was filed is completed. If at that time the operator of the initial well formally applies for the discovery allowable in the pool, the division shall determine after hearing which well receives the discovery allowable.

C. To obtain an oil discovery allowable, the owner of a discovery well shall file form C-109 with the appropriate division district office and the division's Santa Fe office. Each copy of the form shall be accompanied by the following.

(1) A map depicting all wells within a two-mile radius of the discovery well. The owner of the discovery shall clearly show producing oil and gas wells and the formations from which they are producing or have produced as well as all dry holes and the depths to which they were drilled. Maps shall be on a scale one inch equals 1000 feet and shall also indicate the names of all lessees of record in the depicted area.

(2) A complete electrical log of the subject well with the tops and bottoms of producing formations in the subject well and in nearby wells identified thereon.

(3) If the application is based on horizontal separation, a sub-surface structural map of the producing formations for

which the owner of the discovery seek the discovery allowable, showing seismic or geological interpretation of the subject structure and any troughs, faults, pinchouts, etc., that separate the subject well from nearby wells producing from the same formation or formations.

(4) A geological cross-section prepared from electrical logs of the subject well and nearby wells establishing horizontal as well as vertical separation from other wells depicted on the plat that are producing or have produced from the discovery formation or formations.

(5) A summary of all available reservoir data including bottom hole pressure data, fluid levels, core analyses, reservoir liquid characteristics and any other pertinent data on the subject reservoir as well as other nearby reservoirs that may help establish whether the subject well is in fact a discovery.

D. If, in the division staff's opinion, good cause exists to bring the pool for hearing as a discovery, and the division has received no objection from another operator, the division shall place the pool on the first available hearing docket for inclusion by the staff in its regular pool nomenclature case. If the staff disagrees with the applicant's contention that a new pool has been discovered or if within 10 days after receiving a copy of the application another operator files with the division an objection to the creation of a new pool and the assignment of a discovery allowable, the division shall notify the applicant. The applicant will be expected to present the evidence supporting the applicant's case. Or, if the applicant so desires, the division may set the application for separate hearing on other than the nomenclature docket for presentation of evidence by the applicant.

E. The effective date of a well's discovery allowable is 7:00 a.m. on the first day of the month next succeeding the month in which the division approves the discovery.

F. The total discovery allowable attributable to each zone in the well shall be produced over a two-year period commencing with the time of authorization. The well's daily allowable for each pool receiving the discovery allowable shall not exceed the daily top proration unit allowable for the pool plus the total pool discovery allowable divided by 730 days (731 days if a leap year is included).

G. A discovery well may produce only that volume of gas equivalent to the applicable limiting gas-oil ratio for the pool multiplied by the top proration unit allowable for the pool plus the daily oil discovery allowable. In addition to all other statewide rules not specifically excepted in 19.15.20.16 NMAC, the provisions of 19.15.20.9 NMAC relating to daily tolerance, monthly tolerance and underproduction and overproduction shall apply to oil discovery allowables as well as to regular allowables for discovery wells.

H. Nothing contained in 19.15.20.16 NMAC prohibits the division from curtailing the discovery allowables of wells during times of depressed market demand. However, the division shall reinstate such discovery allowables for production at the earliest possible date. Further, when it appears reservoir damage or waste may result from production of the oil discovery allowable within the normal two-year period, the division may, after notice and hearing, extend the period.

[19.15.20.16 NMAC - Rp, 19.15.7.509 NMAC, 12/1/08]

HISTORY of 19.15.20 NMAC:

History of Repealed Material: 19.15.7 NMAC, Oil Proration and Allocation (filed 05/21/2002) repealed 12/1/08.

NMAC History:

19.15.7 NMAC, Oil Proration and Allocation, (filed 05/21/2002) was replaced by 19.15.20 NMAC, Oil Proration and Allocation, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 21 GAS PRORATION AND ALLOCATION

19.15.21.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.21.1 NMAC - Rp, 19.15.8.1 NMAC, 12/1/08]

19.15.21.2 SCOPE: 19.15.21 NMAC applies to persons engaged in gas development and production within New Mexico.

[19.15.21.2 NMAC - Rp, 19.15.8.2 NMAC, 12/1/08]

19.15.21.3 STATUTORY AUTHORITY: 19.15.21 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-16 and Section 70-2-17.

[19.15.21.3 NMAC - Rp, 19.15.8.3 NMAC, 12/1/08]

19.15.21.4 DURATION: Permanent.

[19.15.21.4 NMAC - Rp, 19.15.8.4 NMAC, 12/1/08]

19.15.21.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.

[19.15.21.5 NMAC - Rp, 19.15.8.5 NMAC, 12/1/08]

19.15.21.6 OBJECTIVE: To establish requirements implementing the division's statutory authority to prorate and allocate gas production to prevent waste and protect correlative rights.

[19.15.21.6 NMAC - Rp, 19.15.8.6 NMAC, 12/1/08]

19.15.21.7 DEFINITIONS:

A. "Acreage factor" means a GPU's acreage factor determined to the nearest hundredth of a unit by dividing the acreage assigned to the GPU by a number equal to the number of acres in a standard GPU for the pool. However, the acreage tolerance provided in Subparagraph (b) of Paragraph (1) of Subsection A of 19.15.8.21.12 NMAC shall apply.

B. "AD factor" means an acreage multiplied by the deliverability factor is calculated in pools in which acreage and deliverability are proration factors. The product obtained by multiplying the acreage factor by the calculated deliverability (expressed as MCF per day) for that GPU is known as the AD factor for that GPU. The AD factor is computed to the nearest whole unit.

C. "Allocation hearing" means a hearing the division holds twice each year to determine pool allocations for the ensuing allocation period.

D. "Allocation period" means a six-month period beginning at 7:00 a.m. April 1 and October 1 of each year.

E. "Balancing date" means the date beginning at 7:00 a.m. April 1 of each year; the 12 months following this date is the gas proration period.

F. "Broker" means a third party who negotiates contracts for purchase and resale.

G. "Classification period" means a three month period beginning at 7:00 a.m. on April 1, July 1, October 1 and January 1 of each year.

H. "Deliverability pressure" means the designated delivery pressure at which pipeline companies can accept gas from gas wells depending on the pipeline's capacity.

I. "Gas pool" means a pool that the division has designated as a gas pool after notice and hearing.

J. "Gas proration unit

(GPU)" means the acreage allocated to a well, or in the case of an infill well or wells to a group of wells, for purposes of spacing and proration. A GPU may be either of a standard or nonstandard size as provided in 19.15.21 NMAC.

K. "Gas purchaser" means the purchaser (where the producer first exchanges ownership of the gas to the purchaser for an agreed value) of the gas from a gas well or GPU.

L. "Gas transporter" means a taker of gas, the party servicing the well meter or the party responsible for measuring the gas sold from the well or beneficially used off-lease. This could be at the wellhead, at any other point on the lease or at a division-authorized point where connection is made for gas transportation or utilization (other than is necessary for maintaining the well's producing ability). The gas transporter can be the gatherer, transporter, producer or a delegate of one of those parties. The gas transporter shall be identified on form C-115 and shall be responsible for creating and maintaining form C-111 as required under 19.15.7.21 NMAC's provisions.

M. "Infill well" means an additional producing well on a GPU that serves as a companion well to an existing well on the GPU.

N. "Marginal GPU" means a proration unit that is incapable of producing or has not produced the non-marginal allowable based on pool allocation factors. Marginal GPUs do not accrue over or underproduction.

O. "Non-marginal GPU" means a proration unit receiving an allowable based upon pool allocation factors. Non-marginal proration units accrue over or underproduction.

P. "Overproduction" means the volume of gas produced on a GPU in a month greater than the assigned non-marginal allowable (does not include gas used in maintaining the GPU's wells' producing ability). Overproduction accumulates month to month during the proration period.

Q. "Prorated gas pool" means a gas pool in which, after notice and hearing, the division allocates production according to 19.15.21 NMAC and any applicable special pool orders.

R. "Proration period" means the 12-month period beginning April 1 of each year.

S. "Shadow allowable" means the gas volume calculated for a marginal GPU that is equal to the allowable assigned to a non-marginal GPU in the same pool of the same A (acreage) or A and AD (acreage deliverability) factors as the marginal GPU.

T. "Underproduction" means the volume of assigned non-marginal allowable not produced on a GPU. Underproduction accumulates month to month during the proration period.

[19.15.21.7 NMAC - Rp, 19.15.8.7 NMAC, 12/1/08]

19.15.21.8 ALLOCATION OF GAS PRODUCTION: When the division determines that allocation of gas production in a designated gas pool is necessary to prevent waste the division, after notice and hearing, shall consider the nominations of purchasers from that gas pool and other relevant data, fix the pool's allowable production and allocate production among the gas wells in the pool delivering to a gas transportation facility upon a reasonable basis and recognizing correlative rights. The division shall include in the pool's proration schedule gas wells that the division finds are being unreasonably discriminated against through denial of access to a gas transportation facility that is reasonably capable of handling the type of gas the wells produce.

[19.15.21.8 NMAC - Rp, 19.15.8.601 NMAC, 12/1/08]

19.15.21.9 PRORATION PERIOD: The proration period shall be at least six months and the division shall make the pool allowable and allocations of the pool allowable at least 30 days prior to each proration period.

[19.15.21.9 NMAC - Rp, 19.15.8.602 NMAC, 12/1/08]

19.15.21.10 ADJUSTMENT OF ALLOWABLES: When the actual market demand from an allocated gas pool during a proration period is more than or less than the allowable the division set for the pool for the period, the division shall adjust the gas proration unit allowables for the pool for the next proration period so that each gas proration unit has a reasonable opportunity to produce its fair share of the gas production from the pool and so that correlative rights are protected.

[19.15.21.10 NMAC - Rp, 19.15.8.603 NMAC, 12/1/08]

19.15.21.11 GAS PRORATION UNITS: Before issuing a proration schedule for an allocated gas pool, the division after notice and hearing shall fix the pool's gas proration unit.

[19.15.21.11 NMAC - Rp, 19.15.8.604 NMAC, 12/1/08]

19.15.21.12 GAS PRORATION RULES:

A. Well acreage and location requirements.

(1) Standard gas proration unit size and well spacing.

(a) Unless otherwise provided for in applicable special pool orders, operators shall drill gas wells in prorated gas pools according to the well spacing and acreage requirements contained in 19.15.21 NMAC provided that when an operator drills a well in a pool with 640 acre spacing, a government section shall comprise the proration unit.

(b) A GPU an operator drills according to Subparagraph (a) of Paragraph (1) of Subsection A of 19.15.21.12 NMAC that contains acreage within the tolerances below is a standard GPU for calculating allowables:

Standard Proration Unit	Acreage Tolerance
160 acres	158-162 acres
320 acres	316-324 acres
640 acres	632-648 acres

(2) Nonstandard gas proration units.

(a) The district supervisor of the appropriate division district office may approve a nonstandard GPU without notice and hearing when the GPU's unorthodox size and shape is necessitated by a variation in the legal subdivision of the United States public land surveys and the nonstandard GPU is not less that 75 percent nor more than 125 percent of a standard GPU by accepting a form C-102 land plat from the operator showing the proposed nonstandard GPU with the number of acres contained in the proposed nonstandard GPU, and shall assign an allowable to the nonstandard GPU based upon the acreage factor for that acreage.

(b) The division may approve nonstandard proration units and unorthodox locations according to applicable special pool orders or division rules.

B. Nominations.

(1) Gas purchasers or gas transporters shall nominate. Each gas purchaser or each gas transporter shall file with the division its nomination for the amount of gas that it in good faith desires to purchase or expects to transport during the ensuing allocation period from each gas pool 19.15.21 NMAC regulates. The purchaser may delegate the nomination responsibility to the transporter, operator or broker by notifying the division's Santa Fe office. The purchaser shall submit the nomination for each pool to the division's Santa Fe

office on form C-121-A by the first day of the month during which the division will consider at its allocation hearing the nominations for the succeeding allocation period. The division shall consider at its allocation hearing the nominations received, actual production and other factors the division deems applicable in determining the amount of gas that may be produced without waste during the ensuing allocation period.

(2) The director may suspend Subsection B of 19.15.21.12 NMAC whenever it appears that the nominations are of little or no value.

(3) Schedule. The division shall issue a gas proration schedule for each allocation period showing the monthly allowable for each GPU that the operator may produce during each month of the ensuing allocation period, each GPUs' current classification and other information as is necessary to show the allowable production status of each GPU on the schedule. The division may issue supplemental proration schedules during an allocation period as necessary to show changes in GPU classification, adjustments to allowables due to changes in market conditions or to reflect other changes the division deems necessary.

(4) Proration of all gas wells within a pool. The division shall include in the proration schedule the gas wells, in the gas pools 19.15.21 NMAC regulates, delivering to a gas transporter, and shall include in the proration schedule wells that the division finds are being unreasonably discriminated against through denial of access to a gas transportation facility, which are reasonably capable of handling the type of gas the wells produce.

C. Allocation and granting of allowables.

(1) Filing of form C-102 and form C-104 required. The division shall not assign a GPU an allowable before receipt of form C-102 and the approval date of form C-104.

(2) How allowables are calculated. The total allowable to be allocated to each gas pool for each allocation period shall equal the estimated market demand as the division determines, plus any adjustments the director deems necessary to equate the total pool allowable to the estimated market demand. The director may make adjustments the director deems necessary to compensate for overproduction, underproduction and other circumstances that may necessitate the adjustment to equate the pool allowable to the anticipated market demand. The director shall establish estimated market demand for each pool from any information the director requires and can consist of nominations from purchasers, transporters or other parties having knowledge of market demand for gas from the pools, actual past production figures, seasonal trends or any other factors the director deems necessary to establish estimated market demand. The director is not required to use all the information requested and can establish market demand by any method the director approves. The division shall assign a monthly allowable to each GPU entitled to an allowable for the ensuing allocation period by allocating the pool allowable among all such GPUs in that pool according to the procedure set forth in 19.15.21 NMAC. Should market conditions indicate a change is necessary, the director may adjust allowables up or down during the six-month allocation period using a maximum of 10 percent as a guideline.

(3) Marginal GPU allowable. The monthly allowable the division assigns to each marginal GPU shall equal the marginal GPU's average monthly production from its latest classification period.

(4) Non-marginal GPU allowable. The division shall determine non-marginal GPU allowables in conformance with the applicable special pool orders.

(a) In pools where acreage is the only proration factor, the division shall allocate the total non-marginal allowables to each GPU in the proportion that each GPU acreage factor bears to the total acreage factor for all non-marginal GPUs.

(b) In pools where acreage and deliverability are proration factors:

(i) the division shall allocate a percentage as set forth in special pool orders of the non-marginal allowable to each GPU in the proportion that each GPU's AD factor bears to the total AD factor for all non-marginal GPU's in the pool; and

(ii) the division shall allocate the remaining non-marginal allowable to non-marginal GPUs among each GPU in the proportion that each GPU's acreage factor bears to the total acreage factor for all non-marginal GPUs in the pool.

(5) New connects assignment of allowables. Allowables to newly completed gas wells shall commence, in pools where acreage is the only proration factor, on the date of first delivery of gas to a gas transporter as demonstrated by an affidavit the transporter furnishes to the appropriate division district office or the approval date of form C-102 and form C-104, whichever is later.

(6) Gas charged against GPU's allowable. Except as provided in the special pool orders, the operator shall charge the volume of produced gas sold or beneficially used other than lease fuel from each GPU against the GPU's allowable; however, the operator shall not charge the gas it uses in maintaining the well's producing ability against the allowable.

(7) Change in acreage. If an operator requests to change the acreage assigned to a GPU, the operator shall file form C-102 with the appropriate division district office. The revised allowable, as the division determines, assigned to the GPU shall be effective on the first day of the month following the division's receipt of the notification.

(8) Minimum allowables. After notice and hearing, the division may assign minimum allowables for prorated gas pools to avoid waste, encourage efficient operations and to prevent wells' premature abandonment. (See special pool orders for minimum allowable amount.) In determining the volume of minimum allowable for a well with a standard proration unit, the division shall take into account economic and engineering factors such as drilling and operating costs, anticipated revenues, taxes and any similar data that establish that the ultimate recovery of hydrocarbons will increase from the pool because of the adoption of a minimum allowable for the pool. Once adopted, the division shall proportionally adjust minimum allowable for wells with nonstandard proration units.

(9) Deliverability tests. In pools where acreage and deliverability are proration factors, an operator shall test wells on non-marginal GPUs in accordance with division rules and the division shall use the test results in calculating deliverabilities for the succeeding proration period. The operator shall test wells on GPUs reclassified to non-marginal within 90 days of the order and thereafter in accordance with the appropriate testing schedule for the pool. Wells on marginal GPUs are exempt from deliverability testing.

D. Balancing of production.

(1) Underproduction. A non-marginal GPU that has an underproduced status as of the end of a gas proration period may carry the underproduction forward in the next gas proration period and may produce the underproduction in addition to the allowable assigned during the succeeding period. The division shall cancel an underproduction carried forward into a gas proration period and remaining unproduced at the end of the gas proration period.

(2) Balancing underproduction. Production during any one month of a gas proration period greater than the allowable the division assigned to a GPU for such a month shall be applied against the underproduction carried into such a period in determining the amount of allowable, if any, to be canceled.

(3) Overproduction. A GPU that has an overproduced status as of the end of a gas proration period shall carry the over-

production forward into the next gas proration period. The overproduction shall be made up by underproduction during the succeeding gas proration period. The division shall shut-in a GPU that has not made up the overproduction carried into a gas proration period by the end of the period until the overproduction is made up.

(a) Twelve-times overproduced, northwest. For the prorated gas pools of northwest New Mexico, if the division determines that a GPU is overproduced in an amount exceeding 12 times its current year January allowable (or, in the case of a newly connected well, a marginal well or a well recently reclassified as non-marginal, 12 times the January allowable assigned to a non-marginal GPU of similar acreage and deliverability factors), it shall be shut in until its overproduction is less than 12 times its January allowable, as determined hereinabove.

(b) Six-times overproduced, southeast. For the prorated gas pools of southeast New Mexico, if the division determines that a GPU is overproduced in an amount exceeding six times its current year January allowable (or, in the case of a newly connected well, a marginal well or a well recently reclassified as non-marginal, six times the January allowable assigned to a non-marginal GPU of a similar acreage factor), the division shall shut-in the GPU until its overproduction is less than six times its January allowable, as determined in Subsection C of 19.15.21 NMAC.

(4) Exception to shut in for overproduction. The director may permit a GPU that is subject to shut-in pursuant to Paragraph (3) of Subsection D of 19.15.21.12 NMAC to produce up to 250 MCF of gas per month upon the operator's proper showing to the director that complete shut-in would cause undue hardship, provided however, the director may rescind permission for a GPU produced greater than the monthly rate the director.

(5) Balancing overproduction. Allowable assigned to a GPU during a one month of a gas proration period greater than the production for the same month shall be applied against the overproduction chargeable to the GPU in determining the overproduction that must be made up pursuant to the provisions of Paragraph (3) of Subsection D of 19.15.21.12 NMAC above.

(6) Exception to balancing overproduction. The director may allow the operator to make up overproduction at a lesser rate than permitted under Paragraph (3) of Subsection D of 19.15.21.12 NMAC upon the operator's showing at public hearing that the lesser rate is necessary to avoid material damage to the well.

(7) Hardship gas wells. If a GPU containing a hardship gas well is overproduced, the operator shall take the necessary steps to reduce production in order to reduce the overproduction. An overproduction existing at the time of a well's designation as a hardship gas well or accruing to the GPU after the designation shall be carried forward until it is made up by underproduction. The division shall not permit a GPU containing a hardship gas well, which GPU is overproduced, to produce at a rate higher than the minimum producing rate the division authorized.

(8) Moratorium on shut-ins. The director may grant a pool-wide moratorium of up to three months as to the shutting in of gas wells in a pool during periods of high demand emergency upon the operator's proper showing that the emergency exists, and that a significant number of the wells in the pool are subject to shut-in pursuant to the provisions of Paragraph (3) of Subsection D of 19.15.21.12 NMAC. The director shall not grant a moratorium beyond three months except after notice and hearing.

(9) The director may reinstate allowable to wells that suffered cancellation of allowable under Paragraph (1) of Subsection D of 19.15.21.12 NMAC or Paragraph (3) of Subsection E of 19.15.21.12 NMAC or loss of allowable due to reclassification of a well under Paragraph (2) of Subsection E of 19.15.21.12 NMAC if the cancellation or loss of allowable was caused by non-access or limited access to the average market demand in the pool rather than inability of the well to produce. Upon petition, with a showing of circumstances that prevented production of the non-marginal allowable, and evidence that the well was capable of producing at allowable rates during the period for which reinstatement is requested, the allowable may be reinstated in such amounts needed to avoid curtailment or shut-in of the well for excessive overproduction. The division may approve the petition administratively or docket the petition for hearing within 30 days after receipt in the division's Santa Fe office.

E. Classification of GPUs.

(1) Reclassification by the director. The director may reclassify a marginal or non-marginal GPU anytime the GPUs producing ability justifies reclassification. The director may suspend the reclassification of GPUs on the director's own initiative, or upon an affected interest owner's proper showing, if it appears that the suspension is necessary to permit underproduced GPUs, which would otherwise be reclassified, a proper opportunity to make up the underproduction.

(2) Reclassification to marginal. The director may reclassify a non-marginal GPU as marginal in either of the following ways.

(a) After the production data is available for the last month of each classification period, the director may reclassify a GPU that had an underproduced status at the beginning of the allocation period to marginal if its highest single month's production during the classification period is less than its average monthly allowable during the period. However, the operator of a GPU so classified, or other affected interest owner, shall have 30 days after receipt of notification of marginal classification in which to submit satisfactory evidence to the division that the GPU is not of marginal character and should not be so classified.

(b) The director may reclassify a GPU that is underproduced more than the overproduction limit as described in Paragraph (3) of Subsection D of 19.15.21.12 NMAC as marginal.

(3) Cancellation of underproduction for marginal GPU. The division shall not permit a GPU that is classified as marginal to accumulate underproduction, and shall cancel an underproduction accrued to a GPU before its classification as marginal.

(4) Reclassification to non-marginal. If, at the end of a classification period, a marginal GPU has produced more gas during the proration period to that time than its shadow allowable for that same period, the division shall reclassify the GPU as a non-marginal GPU.

(5) Reinstatement of status. The division shall reinstate to a GPU reclassified to non-marginal under the provisions of Paragraph (4) of Subsection E of 19.15.21.12 NMAC all underproduction that accrued or would have accrued as a non-marginal GPU from the current proration period. The division may reinstate underproduction from the prior proration period after notice and hearing. Uncompensated-for overproduction accruing to the GPU while marginal shall be chargeable upon reclassification to non-marginal.

F. Reporting of production - C-111 and C-115 reports. Transporters and operators shall create and maintain for division inspection or file, as applicable, gas transportation and production reports pursuant to 19.15.7.21 NMAC and 19.15.7.24 NMAC provided that upon the director's approval as to the specific program to be used, a producer or transporter of gas may report metered production of gas on a chart-period basis; provided the following provisions apply to each gas well:

(1) reports for a month shall include not less than 24 or more than 32 reported days;

(2) reported days may include as many as the last seven days of the previous month but no days of the succeeding month; and

(3) the total of the monthly reports for a year shall include not less than

360 or more than 368 reported days.

G. For purposes of Subsection F of 19.15.21.12 NMAC, the term "month" means "calendar month" for those reporting on a calendar month basis, and means "reporting month" for those reporting on a chart-period basis according to the exception provided in Subsection F of 19.15.21.12 NMAC.

[19.15.21.12 NMAC - Rp, 19.15.8.605 NMAC, 12/1/08]

19.15.21.13 TESTS AND TEST PROCEDURES FOR PRORATED POOLS IN NORTHWEST NEW MEXICO:

A. Type of tests required for wells completed in prorated gas pools.

(1) Reclassified GPUs. An operator of a well on a GPU that the director has reclassified as non-marginal shall conduct deliverability tests on that well within 90 days of the order reclassifying it, unless there are current tests on file with the division or that order requires a new test. A current test is a test that was conducted during the last test period for that pool or later.

(2) Non-marginal GPUs. Operators shall conduct deliverability tests on wells on non-marginal GPUs every five years. If the division determines that a well's test data and production data warrant more frequent testing of the well, the division may set up special testing schedules for that well.

(3) Scheduling of tests.

(a) Notification of pools to be tested. By September 1 of each year the division's Aztec district office shall notify operators of non-marginal GPUs if their wells will be tested during the following test period.

(b) The operators shall file the results of all deliverability tests required with the Aztec district office within 90 days following the completion of each test. Provided however, that a test completed between December 31 of the test year and March 10 of the following year is due no later than March 31. The division shall not grant an extension of time for filing tests beyond March 31 except after notice and hearing.

(c) The operator's failure to file a test within the above-prescribed times subjects the GPU to the loss of one day's allowable for each day the test is late.

(d) A well scheduled for testing during its test year may have the conditioning period, test flow period and part of the seven-day shut-in period conducted in December of the previous year provided that, if the seven-day shut-in period immediately follows the test flow period, the operator shall measure the seven-day shut-in pressure in January of the test year. The earliest date that a well can be scheduled for a deliverability test is such that the test flow period would end on December 25 of the previous year.

(e) Downhole commingled wells are to be scheduled for tests on dates for the pool of the well's lowermost prorated completion.

(f) In the event the division shuts-in a well for overproduction, the operator may produce the well for a period of time to secure a test after written notification to the division. The operator shall use gas produced during this testing period in determining the well's over/under produced status.

(g) An operator may schedule a well for a deliverability retest upon notification to the Aztec district office at least 10 days before the operator will commence the test. The retest shall be for substantial reason and is subject to the division's approval. The operator shall conduct a retest in conformance with the deliverability test procedures of 19.15.21.13 NMAC. The division may require the retesting of a well by notification to the operator to schedule the retest. The operator shall identify these tests, as filed on form C-122-A, as "RETEST" in the remarks column.

(4) Witnessing of tests. Any or all of the following may witness a deliverability test: a division representative, an offset operator, a representative of the gas transportation facility connected to the well under test or a representative of the gas transportation facility taking gas from an offset operator.

B. Procedure for testing.

(1) The test shall begin by producing a well in the normal operating manner into the pipeline through either the casing or tubing, but not both, for a period of 14 consecutive days. This is known as the conditioning period. The operator shall not change the production valve and choke settings during either the conditioning or flow periods, except during the first 10 days of the conditioning period when maximum production would over-range the meter chart or location production equipment. The first 10 days of the conditioning period shall not have more than 48 hours of cumulative interruptions of flow. The 11th to 14th days, inclusive of the conditioning period, shall have no interruptions of flow. An interruption of flow that occurs as the well's normal operation as stop-cock flow, intermittent flow or well blow down shall not be counted as shut-in time in either the conditioning or flow period.

(2) The operator shall determine daily flowing rate from an average of seven or eight consecutive producing days, following a minimum conditioning period of 14 consecutive days of production. This is known as the flow period.

(3) The operator shall measure instantaneous pressure by a deadweight gauge or other division-approved method during the seven-day or eight-day flow period at the casinghead, tubinghead and orifice meter, and record it along with instantaneous meter-chart static pressure reading.

(4) If a well is producing through a compressor that is located between the wellhead and the meter run, the operator shall report the meter run pressure and the wellhead casing pressure and the wellhead tubing pressure on form C-122-A. Neither the suction pressure nor the discharge pressure of the compressor is considered wellhead pressure. The operator shall enter a note in the remarks portion on form C-122-A stating: "This well produced through a compressor".

(5) When it is necessary to restrict the flow of gas between the wellhead and the orifice meter, the operator shall determine the ratio of the downstream pressure, psi absolute, to the upstream pressure, psi absolute. When this ratio is 0.57 or less, the operator shall consider critical flow conditions to exist across the restriction.

(6) When more than one restriction between the wellhead and the orifice meter causes the pressures to reflect critical flow between the wellhead and the orifice meter, the operator shall measure the pressures across each of these restrictions to determine whether critical flow exists at any restriction. When critical flow does not exist at any restriction, the operator shall report the pressures taken to disprove the critical flow to the division on form C-122-A in item (n) of the form. When critical flow conditions exist, the operator shall measure the instantaneous flowing pressures required in Paragraph (3) of Subsection B of 19.15.21.13 NMAC during the last 48 hours of the seven-day or eight-day flow period.

(7) When critical flow exists between the wellhead and the orifice meter, the operator shall use the measured wellhead flowing pressure of the string through which the well flowed during the test as P_t when calculating the static wellhead working pressure (P_w) using the method established in Paragraph (9) of Subsection B of 19.15.21.13 NMAC

(8) When critical flow does not exist at any restriction, P_t shall be the corrected average static pressure from the meter chart plus friction loss from the wellhead to the orifice meter.

(9) The operator shall calculate the static wellhead working pressure (P_w) of a well under test seven-day or eight-day average static tubing pressure if the well is flowing through the casing; it shall be the

calculated seven-day or eight-day average static casing pressure if the well is flowing through the tubing. The operator shall calculate the static wellhead working pressure (P_w) by applying the tables and procedures set out in the Gas Well Testing Manual for Northwest New Mexico available from the division.

(10) To obtain the shut-in pressure of a well under test, the operator shall shut-in the well some time during the current testing season for a period of seven to 14 consecutive days, which have been preceded by a minimum of seven days of uninterrupted production. The operator shall measure the shut-in pressure on the seventh to 14th day of shut-in of the well with a deadweight gauge or other division-approved method. The operator shall measure the seven-day shut-in pressure on both the tubing and the casing when communication exists between the two strings. The operator shall use the higher of such pressures as P_c in the deliverability calculation. When the division determines a shut-in pressure to be abnormally low or the well can not be shut-in due to "HARDSHIP" classification, the operator shall determine the shut-in pressure to be used as P_c by one of the following methods:

(a) a division-designated value;

(b) an average shut-in pressure of all offset wells completed in the same zone; offset wells include the four side and four corner wells, if available; or

(c) a calculated surface pressure based on a calculated bottom hole pressure; the operator shall make the calculations in accordance with the examples in the "Gas Well Testing Manual for Northwest New Mexico".

(11) The operator shall take all wellhead pressures, as well as the flowing meter pressure tests that are to be taken during the seven-day or eight-day deliverability test period in Subsection B of 19.15.21.13 NMAC, with a deadweight gauge or other division-approved method. The operator shall record and maintain the pressure readings and the date and time according to the chart in the operator's records with the test information.

(12) The operator shall change and arrange orifice meter charts to reflect upon a single chart the flow data for the gas from each well for the full seven-day or eight-day deliverability test period; however, the division shall not void a test if the operator satisfactorily explains the necessity for using test volumes through two chart periods. The operator shall make corrections for pressure base, measured flowing temperature, specific gravity and supercompressibility, provided however, if the specific gravity of the gas from a well under test is not available, the operator may assume an estimated specific gravity for the well, based upon that of gas from nearby wells, the specific gravity of which has been actually determined by measurement.

(13) The purchasing company that integrates the flow charts shall determine the average flowing meter pressure for the seven-day or eight-day flow period and the corrected integrated volume and furnish them to the operator or testing agency.

(14) The operator shall calculate the seven-day or eight-day flow period volume from the integrated readings as determined from the flow period orifice meter chart. The operator shall divide volume calculated by the number of testing days on the chart to determine the average daily rate of flow during the flow period. The flow period shall have a minimum of seven and a maximum of eight legibly recorded flowing days to be acceptable for test purposes. The operator shall correct the volume used in this calculation to the division's standard conditions of 15.025 psi absolute pressure base, 60 degrees fahrenheit temperature base and 0.60 specific gravity base.

(15) The operator shall calculate the daily volume of flow, as determined from the flow period chart readings, by applying the basic orifice meter formula or other acceptable industry standard practices.

$$Q = C' (h_w P_f)^{.5}$$

Where:

Q = metered volume of flow MCFD @ 15.025 psi absolute, 60 degrees fahrenheit and 0.60 specific gravity.

C' = the 24-hour basic orifice meter flow factor corrected for flowing temperature, gravity and supercompressibility.

h_w = daily average differential meter pressure from flow period chart.

P_f = daily average flowing meter pressure from flow period chart.

(16) The basic orifice meter flow factors, flowing temperature factor and specific gravity factor shall be determined from the tables in the manual.

(17) The operator shall use the daily flow period average corrected flowing meter pressure, psi gauge, to determine the supercompressibility factor. The operator may obtain supercompressibility tables from the division.

(18) When the operator makes a supercompressibility correction for a gas containing either nitrogen or carbon dioxide in excess of two percent, the operator shall determine the gas' supercompressibility factors.

(19) The division may approve use of tables for calculating rates of flow from integrator readings that do not specifically conform to the division's *manual for back-pressure testing of natural gas wells* for determining the daily flow period rates of flow upon the operator's showing that the tables are appropriate and necessary.

(20) The operator shall correct the daily average integrated rate of flow for the seven-day or eight-day flow period for meter error by multiplication by a correction factor. The operator shall determine the correction factor by dividing the square root of the deadweight flowing meter pressure, psi absolute, by the square root of the chart flowing meter pressure, psi absolute.

(21) The operator shall calculate the deliverability of gas at the deliverability pressure of a well under test from the test data derived from the required tests using the following deliverability formula:

$$D = Q \left[\frac{(P_c^2 - P_d^2)}{(P_c^2 - P_w^2)}\right]^n$$

Where:

D = deliverability MCFD at the deliverability pressure, (P_d), (at standard conditions of 15.025 psi absolute, 60 degrees fahrenheit and 0.60 specific gravity).

Q = daily flow rate in MCFD, at wellhead pressure (P_w).

P_c = seven-day shut-in wellhead pressure, psi absolute.

P_d = deliverability pressure, psi absolute, as defined above.

P_w = average static wellhead working pressure, as determined from seven-day or eight-day flow period, psi absolute, and calculated from tables in the manual entitled Pressure Loss Due to Friction Tables for Northwest New Mexico.

n = average pool slope of back pressure curves as follows:

for pictured cliffs and shallower formations, 0.85; and

for formations deeper than pictured cliffs, 0.75.

(Note: Special orders for any specific pool or formation may supersede the above values. Check special pool orders if in doubt.)

(22) The value of the multiplier in the above formula (ratio factor after the application of the pool slope) by which Q is multiplied shall not exceed a limiting value the division determines and announces periodically. The division shall make the determination after a study of the test data of the pool obtained during the previous testing season.

(23) The operator shall test downhole commingled wells in the test year for the pool of the well's lowermost prorated completion and shall use pool slope (n) and the lowermost pool's deliverability pressure. The operator shall use the total flow rate from the downhole commingled well to calculate a value of deliverability. For each prorated gas zone of a downhole commingled well the operator shall file a form C-122-A. Also, in the summary portion of that

form all zones shall indicate the same data for line h, P_c, Q, P_w and P_d. The value shown for deliverability (D) is that percentage of the well's total deliverability that is applicable to this zone. The operator shall place a note in the remarks column that indicates the percentage of deliverability to be allocated to this zone of the well.

(24) The division shall consider a test prescribed in 19.15.21 NMAC acceptable if the average flow rate for the final seven-day or eight-day deliverability test is not more than 10 percent in excess of any consecutive seven-day or eight-day average of the preceding two weeks. The division may declare a deliverability test not meeting this requirement and require the operator to re-test the well.

(25) The operator shall make charts relative to deliverability tests or copies of the charts available to the division upon its request.

(26) Operators shall use only testing agencies, whether individuals, companies, pipeline companies or operators, that maintain a log of all tests they have accomplished including all field test data. The operator shall maintain the data collected pursuant to tests Subsection B of 19.15.21.13 NMAC requires for a period of not less than two years plus the current test year.

(27) Forms C-122-A and C-122-B are adopted for use in the northwest New Mexico area in open form subject to modification by the division as experience may indicate desirable or necessary.

(28) The operator shall conduct and report deliverability tests for gas wells in formations in accordance with 19.15.21.13 NMAC. Provided, however, 19.15.21.13 NMAC is subject to a specific modification or change contained in special pool orders the division adopts for a pool after notice and hearing.

C. Informational tests.

(1) One-point back pressure test. The operator may take a one-point back pressure test on newly completed wells before their connection or reconnection to a gas transportation facility. This test is a required official test, but the operator may take the test for informational purposes. When taken, the operator shall take and report this test as prescribed in Paragraph (2) of Subsection C of 19.15.21.13 NMAC.

(2) Test procedure.

(a) The operator shall accomplish this test after a minimum shut-in of seven days. The operator shall measure the shut-in pressure with a deadweight gauge or other division-approved method.

(b) The flow rate shall be that rate in MCFD measured at the end of a three hour test flow period. The flow from the well shall be for three hours through a positive choke, which has a 3/4 inch orifice.

(c) The operator shall install a two-inch nipple that provides a mechanical means of accurately measuring the pressure and temperature of the flowing gas immediately upstream from the positive choke.

(d) The operator shall calculate the absolute open flow using the conventional back pressure formula as shown in the division's *manual for back-pressure testing of natural gas wells*.

(e) The operator shall report the observed data and flow calculations in duplicate on form C-122.

(f) Non-critical flow shall be considered to exist when the choke pressure is 13 psi gauge or less. When this condition exists the operator shall measure the flow rate with a pitot tube and nipple as specified in the division's *manual for back-pressure testing of natural gas wells* or in the division's manual of tables and procedure for pitot tests. The operator shall install the pitot test nipple immediately downstream from the 3/4-inch positive choke.

(g) The operator shall test a well completed with two-inch nominal size tubing (1.995-inch internal diameter) or larger through the tubing.

(3) The operator may conduct other tests for informational purposes prior to obtaining a pipeline connection for a newly completed well upon receiving specific approval to conduct the other tests from the Aztec district office. The Aztec district office shall base approval of these tests primarily upon the volume of gas to be vented.

[19.5.21.13 NMAC - Rp, 19.15.8.606 NMAC, 12/1/08]

HISTORY of 19.15.21 NMAC:

History of Repealed Material: 19.15.8 NMAC, Gas Proration and Allocation (filed 04/08/2003) repealed 12/1/08.

NMAC History:
19.15.8 NMAC, Gas Proration and Allocation (filed 04/08/2003) was replaced by 19.15.21 NMAC, Gas Proration and Allocation, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 22 HARDSHIP GAS WELLS

19.15.22.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.22.1 NMAC - N, 12/1/08]

19.15.22.2 SCOPE: 19.15.22 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.22.2 NMAC - N, 12/1/08]

19.15.22.3 STATUTORY AUTHORITY: 19.15.22 NMAC is adopted pursuant to NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.22.3 NMAC - N, 12/1/08]

19.15.22.4 DURATION: Permanent.
[19.15.22.4 NMAC - N, 12/1/08]

19.15.22.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.22.5 NMAC - N, 12/1/08]

19.15.22.6 OBJECTIVE: To provide an application and approval process for hardship gas well classification.
[19.15.22.6 NMAC - N, 12/1/08]

19.15.22.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.22.8 HARDSHIP GAS WELL:

A. The division shall not classify a well as a hardship gas well except after notice and hearing or upon the division's appropriate administrative action.

B. Wells the division approves as hardship gas wells under 19.15.22.9 NMAC and 19.15.22.10 NMAC have priority access over other gas wells to the current available gas market to the extent that they might otherwise be restricted below the approved minimum flow rate.
[19.15.22.8 NMAC - Rp, 19.15.6.408 NMAC, 12/1/08]

19.15.22.9 APPLICATION FOR HARDSHIP GAS WELL CLASSIFICATION:

A. An operator shall apply for hardship gas well classification in the form the division prescribes and shall include the following:

(1) a narrative description of the problems that lead the applicant to believe that underground waste will occur if the well is shut-in or curtailed below its ability to produce;

(2) documentation that the applicant has made all reasonable and economic attempts to eliminate or correct the problem or an explanation and justification as to why the applicant did not make such attempts;

(3) a well bore sketch;

(4) historical data such as permanent loss of productivity after shut-in, frequency and actual costs of swabbing after shut-in or curtailment including length of swab time required, actual cost figures showing the inability to continue operations without special relief or other data that would show that shut-in or curtailment would cause underground waste;

(5) if failure to obtain a hardship gas well classification would result in the well's premature abandonment, a calculation of the reserves that would be lost by the failure;

(6) the minimum sustainable producing rate as determined by a minimum flow or log-off test or documentation of well production history;

(7) a plat or map showing the proration unit dedicated to the well and the offsetting acreage's ownership;

(8) the name of the authorized transporter (and purchaser if different) of gas; and

(9) other data the applicant considers relevant.

B. The operator shall file an application for hardship gas well classification with the division's Santa Fe office and send a copy to the appropriate division district office.

C. In addition, the applicant shall notify the transporter and purchaser of gas from the well and all offset operators of the application and the requested minimum producing rate and shall so certify to the division in the application.

[19.15.22.9 NMAC - Rp, 19.15.6.409 NMAC, 12/1/08]

19.15.22.10 PROCESSING OF APPLICATIONS FOR HARDSHIP GAS WELLS:

A. The director may administratively approve an application for hardship gas well classification or the director may set the matter for notice and hearing.

B. The division shall list applications that the director is to approve administratively in the dockets of division or commission hearings that are issued from time to time.

(1) If no affected party files a written objection to the proposed administrative action within 20 days following the date of the hearing for which the docket is issued, the director may approve the application. If an affected party files an objection before or within the 20 day period, the division shall set the application for hearing unless the applicant withdraws the application.

(2) The director, on the director's own or upon an affected party's request, may require a minimum flow (log-off) test on the well for which the hardship classification is sought. The applicant shall give notice to the division, the gas transporter and purchaser and the requesting affected party of a minimum flow test conducted following the request, in order that the test may, at the option of the division or the parties, be witnessed. The applicant shall give notice of a minimum flow test conducted prior to submitting a hardship gas well application to the appropriate division district office, the gas transporter and purchaser and offset operators in order that the test may, at the option of the parties, be witnessed.

[19.15.22.10 NMAC - Rp, 19.15.6.410 NMAC, 12/1/08]

19.15.22.11 EMERGENCY HARDSHIP GAS WELL CLASSIFICATION:

A. The district supervisor of the appropriate division district office may grant emergency approval of a hardship gas well classification upon receipt of a copy of the application and attachments and a request by the applicant.

B. The district supervisor shall approve the emergency classification in writing and send a copy to the director, the applicant and the purchaser. The district supervisor may only give emergency approval for 90 days and on a one time only basis.

[19.15.22.11 NMAC - Rp, 19.15.6.411 NMAC, 12/1/08]

19.15.22.12 LIMITS ON HARDSHIP GAS WELL CLASSIFICATION:

A. No hardship gas well classification shall be retained for a period in excess of one year unless the applicant annually requests an extension of the classification and certifies that the well's condition has not substantially changed.

B. The division on its own motion may require that the applicant show cause why the division should not rescind approval of the hardship gas well classification in cases of suspected abuse, changed market conditions or other reason.

C. A well the division has classified as a hardship gas well located in a prorated gas pool shall accumulate over or under production. The division shall not shut in a well classified as a hardship gas well for reason of over production.

D. Affected parties may petition the division for hearing for the purpose of offsetting a ratable take advantage that the operator of a hardship gas well might gain.

[19.15.22.12 NMAC - Rp, 19.15.6.412 NMAC, 12/1/08]

HISTORY of 19.15.22 NMAC:

History of Repealed Material: 19.15.6 NMAC, Natural Gas Production Operating Practice (filed 11/29/2001) repealed 12/1/08.

NMAC History:

Those applicable portions of 19.15.6 NMAC, Natural Gas Production Operating Practice (Sections 408 - 412 (filed 11/29/2001) were replaced by 19.15.22 NMAC, Hardship Gas Wells, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 23 OFF LEASE TRANSPORT OF CRUDE OIL OR CONTAMINANTS

19.15.23.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.23.1 NMAC - N, 12/1/08]

19.15.23.2 SCOPE: 19.15.23 NMAC applies to persons engaged in the off-lease transport of oil or contaminants.

[19.15.23.2 NMAC - N, 12/1/08]

19.15.23.3 STATUTORY AUTHORITY: 19.15.23 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12, which authorizes the division to regulate the transport of oil or gas or their products through the use of certificates of clearance or tenders.

[19.15.23.3 NMAC - N, 12/1/08]

19.15.23.4 DURATION: Permanent.

[19.15.23.4 NMAC - N, 12/1/08]

19.15.23.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.

[19.15.23.5 NMAC - N, 12/1/08]

19.15.23.6 OBJECTIVE: To document the transport of oil or lease condensate or liquids that may contain oil, lease condensate, sediment oil or miscellaneous hydrocarbons to verify the location from where they were removed.

[19.15.23.6 NMAC - N, 12/1/08]

19.15.23.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.23.8 DOCUMENTATION REQUIRED:

A. Off-lease transportation of oil or lease condensate by motor vehicle shall be pursuant to an approved form C-104 and shall be accompanied by a run ticket or equivalent document. The documentation shall identify the transporter's name and address, the operator's name, the name of the lease or facility from which the oil was taken, the date of removal, the API gravity of the oil, the observed percentage of BS&W, the volume of oil or opening and closing tank gauges or meter readings and the driver's signature. The document shall provide space for recording of the lease number and for the signature of the operator or the operator's representative.

B. Off-lease transportation of oil or lease condensate by motor vehicle shall be accompanied by documentation sufficient to verify the location of the tanks or facility from which the transporter removed the liquid. The location may be shown on the run ticket or equivalent document or may be carried separately.

C. Off-lease transportation of liquids that may contain oil, lease condensate, sediment oil or miscellaneous hydrocarbons shall be accompanied by a run ticket, work order or equivalent document, *i.e.*, form C-117-A. The documentation shall identify the transporter's name and address, the operator's name, the name of the lease or facility from which the liquid was removed, the nature of the liquid removed including the observed percentage of liquid hydrocarbons, the volume or estimated volume of liquids and the destination.

D. Off-lease transportation of liquids that may contain oil, lease condensate, sediment oil or miscellaneous hydrocarbons shall be accompanied by documentation sufficient to verify the location of the tanks or facility from which the transporter removed the liquid. The location may be shown on the run ticket or equivalent document or may be carried separately.

E. The transporter shall carry the documentation required under Subsections A and B of 19.15.23.8 NMAC in the vehicle during transportation and produce the documentation for examination and inspection by a division employee, a state police officer or other law enforcement officer upon identification and request.

F. Except where the owner and the transporter are the same, one copy of the documentation shall be left at the facility from which the oil or other liquids were removed.
[19.15.23.8 NMAC - Rp, 19.15.10.804 NMAC, 12/1/08]

19.15.23.9 OFF-LEASE TRANSPORTATION OR STORAGE PRIOR TO MEASUREMENT:

A. The division may grant exceptions to the requirements of Subsection B of 19.15.12.9 NMAC administratively, without hearing, to permit production from one lease to be transported prior to measurement to another lease for storage on that lease when:

(1) the operator files an application for off-lease transportation or storage prior to measurement on form C-107-B with the division's Santa Fe office and sends one copy to the appropriate division district office;

(2) the production is from the same common source of supply;

(3) commingling of production from different leases will not result;

(4) there will be no intercommunication of the handling, separating, treating or storage facilities designated to each lease;

(5) parties owning working interests in the production to be transported off lease prior to measurement have been notified of the application in accordance with 19.15.4.12 NMAC and have consented in writing, or the applicant furnishes proof that the parties were notified by registered or certified mail of its intent to transport the production from one lease to another lease for storage prior to measurement, and after a period of 20 days following receipt of the application, no party has filed objection to the application with the division; and

(6) if state, federal or tribal lands are involved, the operator has notified the state land office or the BLM, as applicable.

B. The division may set for hearing an application for approval of off-lease transportation or storage prior to measurement, in which event notice of hearing shall be given, pursuant to 19.15.4.12 NMAC, to owners of working interests in the production to be transported off lease prior to measurement, and to such other owners as the division may direct.
[19.15.23.9 NMAC - Rp, 19.15.5.303 NMAC, 12/1/08]

HISTORY of 19.15.23 NMAC:

History of Repealed Material: 19.15.5 NMAC, Oil Production Operating Practices (filed 04/27/2000) and 19.15.10 NMAC, Oil Purchasing and Transporting (filed 4/16/2003) repealed 12/1/08.

NMAC History:
Those applicable portions of 19.15.5 NMAC, Oil Production Operating Practices (Section 303) (filed 04/27/2000) and 19.15.10 NMAC, Oil Purchasing and Transporting (Section 804) (filed 4/16/2003) were replaced by 19.15.23 NMAC, Off Lease Transport of Crude Oil or Contaminants, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 24 ILLEGAL SALE AND RATABLE TAKE

19.15.24.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.24.1 NMAC - Rp, 19.15 10.1 NMAC and 19.15.11.1 NMAC, 12/1/08]

19.15.24.2 SCOPE: 19.15.24 NMAC applies to those persons involved in the sale, purchase or transport of oil or gas.
[19.15.24.2 NMAC - Rp, 19.15.10.2 NMAC and 19.15.11.2 NMAC, 12/1/08]

19.15.24.3 STATUTORY AUTHORITY: 19.15.24 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-19 and Section 70-2-22, which authorizes the division to regulate the sale, purchase or acquisition, or the transportation, refining, processing or handling of oil or gas produced in excess of the amount allowed by statute, rule or commission or division order.
[19.15.24.3 NMAC - Rp, 19.15.10.3 NMAC and 19.15.11.3 NMAC, 12/1/08]

19.15.24.4 DURATION: Permanent.
[19.15.24.4 NMAC - Rp, 19.15.10.4 NMAC and 19.15.11.4 NMAC, 12/1/08]

19.15.24.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.24.5 NMAC - Rp, 19.15.10.5 and 19.15.11.5 NMAC, 12/1/08]

19.15.24.6 OBJECTIVE: To regulate oil and gas purchasing and transport.
[19.15.24.6 NMAC - Rp, 19.15.10.6 NMAC and 19.15.11.6 NMAC, 12/1/08]

19.15.24.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.24.8 GAS SALES BY LESS THAN ONE HUNDRED PERCENT OF THE OWNERS IN A WELL: When there are separate owners in a well and where an owner's gas is not being sold with the well's current production, the owner may, if necessary to protect the owner's correlative rights, petition the division for a hearing seeking appropriate relief.
[19.15.24.8 NMAC - Rp, 19.15.6.414 NMAC, 12/1/08]

19.15.24.9 ILLEGAL SALE PROHIBITED: The sale, purchase or acquisition or the transporting, refining, processing or handling in any other way of oil or of gas in whole or in part (or a gas product so produced) produced in excess of the amount a statute or a division rule or order allows is prohibited.
[19.15.24.9 NMAC - Rp, 19.15.10.801 NMAC and 19.15.11.901 NMAC, 12/1/08]

19.15.24.10 RATABLE TAKE; COMMON PURCHASER OF OIL:

A. A person engaged in the purchase of oil to be transported through pipelines is a common purchaser of oil, and shall without discrimination in favor of one producer as against another in the same field, purchase oil tendered to it that has been lawfully produced in the vicinity of, or that may be reasonably reached by pipelines through which it is transporting oil or the pipelines' gathering branches or that may be delivered to the pipeline or the pipelines' gathering branches by truck or otherwise and shall fully perform all a common purchaser's duties.

B. If a common purchaser does not need all the oil lawfully produced within a field, or if it is unable to purchase all the oil, then it shall purchase from each producer in a field ratably, taking and purchasing the same quantity of oil from each well to the extent that each well is capable of producing its ratable portions. However, nothing in Subsection B of 19.15.24.10 NMAC requires more than one pipeline connection for each producing well.

C. In the event a common purchaser of oil is also a producer or is affiliated with a producer, directly or indirectly, the common purchaser shall not discriminate in favor of its own production or in favor of the production of an affiliated producer as against that of others and the common purchaser shall treat the oil produced by the common purchaser or the common purchaser's affiliate as that produced by another producer for the purposes of ratable taking.

D. It shall be unlawful for a common purchaser to unjustly or unreasonably discriminate as to the relative quantities of oil it purchases in various fields of the state; the division to determine the justice or reasonableness, shall consider the production and age of wells in the respective fields and all other factors. It is the intent of 19.15.24.10 NMAC that all fields be allowed to produce and market a just and equitable share of the oil produced and marketed in the state, insofar as the oil can be produced and marketed economically and without waste.

E. In order to preclude premature abandonment, the common purchaser within its purchasing area shall make 100 percent purchases from units of settled production producing 10 barrels or less daily of crude petroleum in lieu of ratable purchases or takings. However, where the common purchaser's takings are curtailed below 10 barrels per unit of crude petroleum daily, then the common purchaser shall purchase equally from all units within its purchasing area, regardless of their producing ability insofar as they are capable of producing.
[19.15.24.10 NMAC - Rp, 19.15.10.802 NMAC, 12/1/08]

19.15.24.11 PRODUCTION OF LIQUID HYDROCARBONS FROM GAS WELLS:

A. Liquid hydrocarbons produced incidental to the authorized production of gas from a well the division has classified as a gas well are legal production.

B. For purposes of 19.15.24.11 NMAC the division shall consider gas produced from a gas well to be authorized production with the following exceptions:

(1) when the operator produces the well without an approved form C-104, designating the gas transporter and the oil or condensate transporter for the well; or

(2) when the division has directed the operator to shut-in the well.

C. In the event the division directs an operator to shut-in a gas well, the operator and the division shall immediately notify both the gas transporter and oil transporter.
[19.15.24.11 NMAC - Rp, 19.15.10.803 NMAC, 12/1/08]

19.15.24.12 RATABLE TAKE OF GAS:

A. A person engaged in purchasing from one or more producers, gas produced from gas wells or casinghead gas produced from oil wells shall be a common purchaser of gas within each common supply source from which it purchases, and shall purchase gas lawfully produced from gas wells or casinghead gas produced from oil wells with which its gas transportation facilities are connected in the pool and other gas lawfully produced within the pool and tendered to a point on its gas transportation facilities.

B. The common purchaser shall make purchases without unreasonable discrimination in favor of one producer against another in the price paid, the quantities purchased, the bases of measurement or the gas transportation facilities afforded for gas of like quantity, quality and pressure available from the wells.

C. In the event the common purchaser is also a producer, the common purchaser shall not discriminate in favor of the common purchaser on production from gas wells or casinghead gas produced from oil wells in which the common purchaser has an interest, direct or indirect, as against other production from gas wells or casinghead gas produced from oil wells in the same pool. For the purposes of 19.15.24.12 NMAC, reasonable differences in prices paid or facilities afforded, or both, do not constitute unreasonable discrimination if the differences bear a fair relationship to differences in quality, quantity or pressure of the gas available or to the relative lengths of time during which the gas will be available to the purchaser. The provisions of Subsection C of 19.15.24.12 NMAC shall not apply to:

(1) a well or pool used for storage and withdrawal from storage of gas originally produced not in violation of division rules or orders;

(2) a person purchasing gas principally for use in the recovery or production of oil or gas; or

(3) a well that the division designates a hardship well.

D. A common purchaser taking gas produced from gas wells or casinghead gas produced from oil wells from a common source of supply shall take ratably under division rules and orders, concerning quantity, as the division or commission promulgates consistent with 19.15.24.12 NMAC. The division or commission, in promulgating the rules and orders may consider the gas' quality and the deliverability, the gas' pressure at the point of delivery, acreage attributable to the well, market requirements in the case of unprorated pools and other pertinent factors.

E. Nothing in 19.15.24.12 NMAC requires, directly or indirectly, a common purchaser to purchase gas of a quality, under a pressure or under other condition by reason of which the common purchaser cannot economically and satisfactorily use the gas by means of the common purchaser's gas transportation facilities then in service.
[19.15.24.12 NMAC - Rp, 19.15.11.902 NMAC, 12/1/08]

HISTORY of 19.15.24 NMAC:

History of Repealed Material: 19.15.6 NMAC, Natural Gas Production Operating

Practice (filed 11/29/2001); 19.15.10 NMAC, Oil Purchasing and Transporting (filed 4/16/2003) and 19.15.11 NMAC, Gas Purchasing and Transporting (filed 09/10/2003) repealed 12/1/08.

NMAC History:
Those applicable portions of 19.15.6 NMAC, Natural Gas Production Operating Practice (Section 414) (filed 11/29/2001); 19.15.10 NMAC, Oil Purchasing and Transporting (Sections 801 - 803) (filed 4/16/2003) and 19.15.11 NMAC, Gas Purchasing and Transporting (Sections 901 and 902) (filed 09/10/2003) were all replaced by 19.15.24 NMAC, Illegal Sale and Ratable Take, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 25 PLUGGING AND ABANDONMENT OF WELLS

19.15.25.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.25.1 NMAC - Rp, 19.15.4.1 NMAC, 12/1/08]

19.15.25.2 SCOPE: 19.15.25 NMAC applies to persons that operate oil or gas wells within New Mexico.
[19.15.25.2 NMAC - Rp, 19.15.4.2 NMAC, 12/1/08]

19.15.25.3 STATUTORY AUTHORITY: 19.15.25 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-12, which authorizes the division to require dry or abandoned wells to be plugged so as to confine oil, gas or water in the strata in which they are found and to prevent them from escaping into other strata.
[19.15.25.3 NMAC - Rp, 19.15.4.3 NMAC, 12/1/08]

19.15.25.4 DURATION: Permanent.
[19.15.25.4 NMAC - Rp, 19.15.4.4 NMAC, 12/1/08]

19.15.25.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.25.5 NMAC - Rp, 19.15.4.5 NMAC, 12/1/08]

19.15.25.6 OBJECTIVE: To establish requirements for properly abandoning and plugging wells drilled for oil or gas or service wells including seismic, core, exploration or injection wells or placing the wells in temporary abandonment in order to protect public health, fresh water and the environment.
[19.15.25.6 NMAC - Rp, 19.15.4.6 NMAC, 12/1/08]

19.15.25.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.25.8 WELLS TO BE PROPERLY ABANDONED:

A. The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.

B. The operator shall either properly plug and abandon a well or place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within 90 days after:

(1) a 60 day period following suspension of drilling operations;

(2) a determination that a well is no longer usable for beneficial purposes; or

(3) a period of one year in which a well has been continuously inactive.
[19.15.25.8 NMAC - Rp, 19.15.4.201 NMAC, 12/1/08]

19.15.25.9 NOTICE OF PLUGGING:

A. The operator shall file notice of intention to plug with the division on form C-103 prior to commencing plugging operations. The notice shall provide all the information 19.15.7.14 NMAC requires including operator and well identification and proposed procedures for plugging the well.

B. In addition, the operator shall provide a well bore diagram showing the proposed plugging procedure.

C. The operator shall notify the division 24 hours prior to commencing plugging operations. In the case of a newly drilled dry hole, the operator may obtain verbal approval from the appropriate district supervisor or the district supervisor's representative of the plugging method and time operations are to begin. The operator shall file written notice in accordance with 19.15.25.11 NMAC with the division within 10 days after the district supervisor has given verbal approval.
[19.15.25.9 NMAC - Rp, 19.15.4.202 NMAC, 12/1/08]

19.15.25.10 PLUGGING:

A. Before an operator abandons a well, the operator shall plug the well in a manner that permanently confines all oil, gas and water in the separate strata in which they are originally found. The operator may accomplish this by using mud-laden fluid, cement and plugs singly or in combination as approved by the division on the notice of intention to plug.

B. The operator shall mark the exact location of plugged and abandoned wells with a steel marker not less than four inches in diameter set in cement and extending at least four feet above mean ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, shall be welded, stamped or otherwise permanently engraved into the marker's metal. A person shall not build permanent structures preventing access to the wellhead over a plugged and abandoned well without the division's written approval. A person shall not remove a plugged and abandonment marker without the division's written approval.

C. The operator may use below-ground plugged and abandonment markers only with the division's written approval when an above-ground marker would interfere with agricultural endeavors. The below-ground marker shall have a steel plate welded onto the abandoned well's surface or conductor pipe and shall be at least three feet below the ground surface and of sufficient size so that all the information 19.15.16.8 NMAC requires can be stenciled into the steel or welded onto the steel plate's surface. The division may require a re-survey of the well location.

D. As soon as practical, but no later than one year after the completion of plugging operations, the operator shall:

(1) level the location;

(3) remove deadmen and other junk; and

(4) take other measures necessary or required by the division to restore the location to a safe and clean condition.

E. The operator shall close all pits and below-grade tanks pursuant to 19.15.17 NMAC.

F. Upon completion of plugging and clean up restoration operations as required, the operator shall contact the appropriate division district office to arrange for an inspection of the well and location.
[19.15.25.10 NMAC - Rp, 19.15.4.202 NMAC, 12/1/08]

19.15.25.11 REPORTS FOR PLUGGING AND ABANDOMENT:

A. The operator shall file form C-105 as provided in 19.15.7.16

NMAC.

B. Within 30 days after completing required restoration work, the operator shall file with the division a record of the work done on form C-103 as provided in 19.15.7.14 NMAC.

C. The division shall not approve the record of plugging or release a bond until the operator has filed necessary reports and the division has inspected and approved the location.

[19.15.25.11 NMAC - Rp, 19.15.4.202 NMAC, 12/1/08]

19.15.25.12 APPROVED TEMPORARY ABANDONMENT: The division may place a well in approved temporary abandonment for a period of up to five years. Prior to the expiration of an approved temporary abandonment the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location or apply for a new approval to temporarily abandon the well.

[19.15.25.12 NMAC - Rp, 19.15.4.203 NMAC, 12/1/08]

19.15.25.13 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:

A. An operator seeking approval for approved temporary abandonment shall submit on form C-103 a notice of intent to seek approved temporary abandonment for the well describing the proposed temporary abandonment procedure the operator will use. The operator shall not commence work until the division has approved the request. The operator shall give 24 hours notice to the appropriate division district office before beginning work.

B. The division shall not approve temporary abandonment until the operator furnishes evidence demonstrating that the well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

(1) damage to the producing zone;

(2) migration of hydrocarbons or water;

(3) the contamination of fresh water or other natural resources; and

(4) the leakage of a substance at the surface.

C. The operator shall demonstrate both internal and external mechanical integrity pursuant to Subsection A of 19.15.25.14 NMAC.

D. Upon successful completion of the work on the temporarily abandoned well, the operator shall submit a request for approved temporary abandonment to the appropriate division district office on form C-103 together with other information Subsection E of 19.15.7.14 NMAC requires.

E. The division shall specify the permit's expiration date, which shall be not more than five years from the date of approval.

[19.15.25.13 NMAC - Rp, 19.15.4.203 NMAC, 12/1/08]

19.15.25.14 DEMONSTRATING MECHANICAL INTEGRITY:

A. An operator may use the following methods of demonstrating internal casing integrity for wells to be placed in approved temporary abandonment:

(1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than 10 percent over a 30 minute period;

(2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than 10 percent over a 30 minute period; or

(3) the operator may demonstrate that the well has been completed for less than five years and has not been connected to a pipeline.

B. During the testing described in Paragraphs (1) and (2) of Subsection A of 19.15.25.14 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure change occurring immediately before, during or immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location;

(3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.14 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

C. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

D. The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

E. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart with form C-103 requesting approved temporary abandonment.

F. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of 19.15.25.13 NMAC.

[19.15.25.14 NMAC - Rp, 19.15.4.203 NMAC, 12/1/08]

19.15.25.15 WELLS TO BE USED FOR FRESH WATER:

A. When a well to be plugged may safely be used as a fresh water well and the landowner agrees to take over the well for that purpose, the operator does not need to plug the well above the sealing plug set below the fresh water formation.

B. The operator shall comply with other requirements contained in 19.15.25.9 NMAC through 19.15.25.11 NMAC regarding plugging, including surface restoration and reporting requirements.

C. Upon completion of plugging operations, the operator shall file with the division a written agreement signed by the landowner whereby the landowner agrees to assume responsibility for the well. Upon the filing of this agreement and division approval of well abandonment operations, the operator is no longer responsible for the well, and the division may release bonds on the well.

[19.15.25.15 NMAC - Rp, 19.15.4.204 NMAC, 12/1/08]

HISTORY of 19.15.25 NMAC:

History of Repealed Material: 19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) repealed 12/1/08.

NMAC History:

19.15.4 NMAC, Plugging and Abandonment of Wells (filed 11/29/2001) was replaced by 19.15.25 NMAC, Plugging and Abandonment of Wells, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 26 INJECTION

19.15.26.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.26.1 NMAC - Rp, 19.15.9.1 NMAC, 12/1/08]

19.15.26.2 SCOPE: 19.15.26 NMAC applies to persons engaged in secondary or other enhanced recovery of oil or gas, pressure maintenance, salt water disposal and underground storage of oil or gas.
[19.15.26.2 NMAC - Rp, 19.15.9.2 NMAC, 12/1/08]

19.15.26.3 STATUTORY AUTHORITY: 19.15.26 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12, which authorizes the division to permit the injection of gas or other substances into a pool for repressuring, cycling, pressure maintenance, secondary or other enhanced recovering operations; and to regulate the disposition of water produced or used in connection with drilling for or producing oil or gas and to direct subsurface disposal of the water.
[19.15.26.3 NMAC - Rp, 19.15.9.3 NMAC, 12/1/08]

19.15.26.4 DURATION: Permanent.
[19.15.26.4 NMAC - Rp, 19.15.9.4 NMAC, 12/1/08]

19.15.26.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.26.5 NMAC - Rp, 19.15.9.5 NMAC, 12/1/08]

19.15.26.6 OBJECTIVE: To regulate secondary or other enhanced recovery, pressure maintenance, salt water disposal and underground storage to prevent waste, protect correlative rights and protect public health, fresh water and the environment.
[19.15.26.6 NMAC - Rp, 19.15.9.6 NMAC, 12/1/08]

19.15.26.7 DEFINITIONS:

A. "Affected person" means the division designated operator; in the absence of an operator, a lessee whose interest is evidence by a written conveyance document either of record or known to the applicant as of the date the applicant files the application; or in the absence of an operator or lessee, a mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application for permit to inject.

B. "Pressure maintenance project" means a project in which an operator injects fluids into the producing horizon in an effort to build up or maintain the reservoir pressure in an area that has not reached the advanced or stripper state of depletion.

C. "Water flood project" means a project in which an operator injects water into a producing horizon in sufficient quantities and under sufficient pressure to stimulate oil production from other wells in the area, and is limited to those areas in which the wells have reached an advanced state of depletion and are regarded as what is commonly referred to as stripper wells.
[19.15.26.7 NMAC - Rp, 19.15.9.701 NMAC, 12/1/08]

19.15.26.8 INJECTION OF FLUIDS INTO RESERVOIRS:

A. Permit for injection required. An operator shall not inject gas, liquefied petroleum gas, air, water or other fluid into a reservoir or formation to maintain reservoir pressure or for secondary or other enhanced recovery or for storage or inject water into a formation for disposal except pursuant to a permit the division has granted after notice and hearing, or that the division has granted by administrative order as authorized in 19.15.26.8 NMAC. The division shall grant a permit for injection under 19.15.26.8 NMAC only to an operator who is in compliance with Subsection A of 19.15.5.9 NMAC. The division may revoke a permit for injection issued under 19.15.26.8 NMAC after notice and hearing if the operator is not in compliance with Subsection A of 19.15.5.9 NMAC.

B. Method of making application.

(1) The operator shall apply for authority to inject gas, liquefied petroleum gas, air, water or other medium into a formation for any reason, including the establishment of or the expansion of water flood projects, enhanced recovery projects, pressure maintenance projects or salt water disposal, by submitting form C-108 complete with all attachments to the division.

(2) The applicant shall furnish, by certified or registered mail, a copy of the application to each owner of the land surface on which each injection or disposal well is to be located and to each leasehold operator or other affected person within any tract wholly or partially contained within one-half mile of the well.

C. Administrative approval.

(1) If the application is for administrative approval rather than for a hearing, it shall be accompanied by a copy of a legal notice the applicant published in a newspaper of general circulation in the county in which the proposed injection well is located. The legal notice shall include:

(a) the applicant's name, address, phone number and contact party;

(b) the injection well's intended purpose, with the exact location of single wells or the section, township and range location of multiple wells;

(c) the formation name and depth with expected maximum injection rates and pressures; and

(d) a notation that interested parties shall file objections or requests for hearing with the division within 15 days.

(2) The division shall not approve an application for administrative approval until 15 days following the division's receipt of form C-108 complete with all attachments including evidence of mailing as required under Paragraph (2) of Subsection B of 19.15.26.8 NMAC and proof of publication as required by Paragraph (1) of Subsection C of 19.15.26.8 NMAC.

(3) If the division does not receive an objection within the 15-day period, and a hearing is not otherwise required, the division may approve the application administratively.

D. Hearings. If a written objection to an application for administrative approval of an injection well is filed within 15 days after receipt of a complete application, if 19.15.26.8 NMAC requires a hearing or if the director deems a hearing advisable, the division shall set the application for hearing and give notice of the hearing.

E. Water disposal wells.

(1) The director may grant an application for a water disposal well administratively, without hearing, only when the waters to be disposed of are mineralized to such a degree as to be unfit for domestic, stock, irrigation or other general use and when the waters are to be disposed of into a formation older than Triassic (Lea county only) and the division receives no objections pursuant to Subsection C of 19.15.26.8 NMAC.

(2) The division shall not permit disposal into zones containing waters having total dissolved solids concentrations of 10,000 mg/1 or less except after public notice and hearing, provided that the division may, by order issued after public notice and hearing, establish exempted aquifers for such zones where the division may administratively approve the injection.

(3) Notwithstanding the provisions of Paragraph (2) of Subsection E of 19.15.26.8 NMAC, the director may authorize disposal into such zones administratively if the waters to be disposed of are of higher quality than the native water in the disposal zone.

F. Pressure maintenance projects.

(1) The division shall set applica-

tions for establishment of pressure maintenance projects for hearing. The division shall fix the project area and the allowable formula for a pressure maintenance project on an individual basis after notice and hearing.

(2) The division may authorize an operator to expand a pressure maintenance project and place additional wells on injection after hearing or administratively, subject to the notice requirements of Subsection B of 19.15.26.8 NMAC.

(3) The director may grant an exception to the hearing requirements of Subsection A of 19.15.26.8 NMAC for the conversion to injection of additional wells within a project area provided that the wells are necessary to develop or maintain efficient pressure maintenance within the project and provided that the division receives no objections pursuant to Subsection C of 19.15.26.8 NMAC.

(4) An established pressure maintenance project shall have only one designated operator. The division shall set an application for exception for hearing.

G. Water flood projects.

(1) The division shall set applications for establishment of water flood projects for hearing.

(2) The project area of a water flood project shall comprise the proration units a given operator owns or operates upon which injection wells are located plus proration units the same operator owns or operates that directly or diagonally offset the injection tracts and have producing wells completed on them in the same formation; provided however, that the division may include in the project area additional proration units not directly or diagonally offsetting an injection tract if, after notice and hearing, the operator establishes that the additional units have wells completed on the unit that have experienced a substantial response to water injection.

(3) The allowable the division assigns to wells in a water flood project area shall equal the wells' ability to produce and is not subject to the depth bracket allowable for the pool or to the market demand percentage factor.

(4) Nothing in Subsection G of 19.15.26.8 NMAC shall prohibit the division's assignment of special allowables to wells in buffer zones after notice and hearing. The division may assign special allowables in the limited instances where it is established at a hearing that it is imperative for the protection of correlative rights to do so.

(5) The division shall authorize the expansion of water flood projects and the placement of additional wells on injection after hearing or administratively, subject to the notice requirements of Subsection B of 19.15.26.8 NMAC.

(6) The director may grant an exception to the hearing requirements of Subsection A of 19.15.26.8 NMAC for conversion to injection of additional wells provided that the well is necessary to develop or maintain thorough and efficient water flood injection for an authorized project and provided that the division does not receive an objection pursuant to Subsection C of 19.15.26.8 NMAC.

(7) An established water flood project shall have only one designated operator. The division shall set for hearing an application for exception.

H. Storage wells.

(1) The director may grant administratively, without hearing, an application for the underground storage of liquefied petroleum gas or liquid hydrocarbons in secure caverns within massive salt beds, and provided the applicant has complied with the notice provisions of Subsection B of 19.15.26.8 NMAC and the division receives no objections pursuant to Subsection C of 19.15.26.8 NMAC.

(2) In addition to the filing requirements of Subsection B of 19.15.26.8 NMAC, the applicant for approval of a storage well under Subsection H of 19.15.26.8 NMAC shall file the following:

(a) with the director, financial assurance in accordance with the provisions of 19.5.8 NMAC; and

(b) with the appropriate division district office:

(i) form C-101;

(ii) form C-102; and

(iii) form C-105.

[19.15.26.8 NMAC - Rp, 19.15.9.701 NMAC, 12/1/08]

19.15.26.9 CASING AND CEMENTING OF INJECTION WELLS: The operator of a well used for injection of gas, air, water or other medium into a formation shall case the well with safe and adequate casing or tubing so as to prevent leakage, and set and cement the casing or tubing to prevent the movement of formation or injected fluid from the injection zone into another zone or to the surface around the outside of a casing string.

[19.15.26.9 NMAC - Rp, 19.15.9.702 NMAC, 12/1/08]

19.15.26.10 OPERATION AND MAINTENANCE:

A. The operator of an injection well shall equip, operate, monitor and maintain the well to facilitate periodic testing and to assure continued mechanical integrity that will result in no significant leak in the tubular goods and packing materials used and no significant fluid movement through vertical channels adjacent to the well bore.

B. The operator of an injection project shall operate and maintain at all times the injection project, including injection wells, producing wells and related surface facilities, in such a manner as will confine the injected fluids to the interval or intervals approved and prevent surface damage or pollution resulting from leaks, breaks or spills.

C. The operator shall report the failure of an injection well, producing well or surface facility, which failure may endanger underground sources of drinking water, to the division under the "immediate notification" procedure of 19.15.29.10 NMAC

D. The operator shall report injection well or producing well failures requiring casing repair or cementing to the division prior to commencement of workover operations.

E. The division may restrict the injected volume and pressure for, or shut-in, injection wells or projects that have exhibited failure to confine injected fluids to the authorized injection zone or zones, until the operator has identified and corrected the failure.

[9.15.26.10 NMAC - Rp 19.15.9.703 NMAC, 12/1/08]

19.15.26.11 TESTING, MONITORING, STEP-RATE TESTS, NOTICE TO THE DIVISION, REQUESTS FOR PRESSURE INCREASES:

A. Testing.

(1) Prior to commencement of injection and any time the operator pulls the tubing or reseats the packer, the operator shall test the well to assure the integrity of the casing and the tubing and packer, if used, including pressure testing of the casing-tubing annulus to a minimum of 300 psi for 30 minutes or such other pressure or time as the appropriate district supervisor may approve. The operator shall use a pressure recorder and submit copies of the chart to the appropriate division district office within 30 days following the test date.

(2) At least once every five years thereafter, the operator shall test an injection well to assure its continued mechanical integrity. Tests demonstrating continued mechanical integrity shall include the following:

(a) measurement of annular pressures in a well injecting at positive pressure under a packer or a balanced fluid seal;

(b) pressure testing of the casing-tubing annulus for a well injecting under vacuum conditions; or

(c) other tests that are demonstrably effective and that the division may approve for use.

(3) Notwithstanding the test procedures outlined in Paragraphs (1) and (2) of Subsection A of 19.15.26.11 NMAC, the

division may require the operator to conduct more comprehensive testing of the injection well when deemed advisable, including the use of tracer surveys, noise logs, temperature logs or other test procedures or devices.

(4) In addition, the division may order that the operator conduct special tests prior to the expiration of five years if the division believes conditions so warrant. The division shall consider a special test that demonstrates a well's continued mechanical integrity the equivalent of an initial test for test scheduling purposes, and the regular five-year testing schedule shall be applicable thereafter.

(5) The operator shall advise the division of the date and time any initial, five-year or special tests are to be commenced so the division may witness the tests.

B. Monitoring. The operator shall equip an injection well so that the injection pressure and annular pressure may be determined at the wellhead and the injected volume may be determined at least monthly.

C. Step-rate tests, notice to the division, requests for injection pressure limit increases.

(1) Whenever an operator conducts a step-rate test for the purpose of increasing an authorized injection or disposal well pressure limit, the operator shall give notice of the date and time of the test in advance to the appropriate division district office.

(2) The operator shall submit copies of injection or disposal well pressure-limit increase applications and supporting documentation to the division's Santa Fe office and to the appropriate division district office.

[19.15.26.11 NMAC - Rp, 19.15.9.704 NMAC, 12/1/08]

19.15.26.12 COMMENCEMENT, DISCONTINUANCE AND ABANDONMENT OF INJECTION OPERATIONS:

A. The following provisions apply to injection projects, storage projects, salt water disposal wells and special purpose injection wells.

B. Notice of commencement and discontinuance.

(1) Immediately upon the commencement of injection operations in a well, the operator shall notify the division of the date the operations began.

(2) Within 30 days after permanent cessation of gas or liquefied petroleum gas storage operations or within 30 days after discontinuance of injection operations into any other well, the operator shall notify the division of the date of the discontinuance and the reasons for the discontinuance.

(3) Before temporarily abandoning or plugging an injection well, the operator shall obtain approval from the appropriate division district office in the same manner as when temporarily abandoning or plugging oil and gas wells or dry holes.

C. Abandonment of injection operations.

(1) Whenever there is a continuous one year period of non-injection into all wells in an injection or storage project or into a salt water disposal well or special purpose injection well, the division shall consider the project or well abandoned, and the authority for injection shall automatically terminate ipso facto.

(2) For good cause shown, the director may grant an administrative extension or extensions of injection authority as an exception to Paragraph (1) of Subsection C of 19.15.26.12 NMAC, provided that any such extension may be granted only prior to the end of one year or continuous non-injection, or during the term of a previously granted extension.

[19.15.26.12 NMAC - Rp, 19.15.9.705 NMAC, 12/1/08]

19.15.26.13 RECORDS AND REPORTS:

A. The operator of an injection well or project for secondary or other enhanced recovery, pressure maintenance, gas storage, salt water disposal or injection of other fluids shall keep accurate records and shall report monthly to the division gas or fluid volumes injected, stored or produced as required on the appropriate form listed below:

(1) secondary or other enhanced recovery on form C-115;

(2) pressure maintenance on form C-115 and as otherwise prescribed by the division;

(3) salt water disposal not regulated by 19.15.36 NMAC on form C-115;

(4) salt water disposal at surface waste management facilities regulated by 19.15.36 NMAC on form C-120-A;

(5) gas storage on form C-131-A; and

(6) injection of other fluids on a division-prescribed form.

B. The operator of a liquefied petroleum gas storage project shall report to the division annually on form C-131-B.

[19.15.26.13 NMAC - Rp, 19.15.9.706 NMAC, 12/1/08]

19.15.26.14 RECLASSIFICATION OF WELLS: The director may reclassify an injection well from a category defined in Subsection B of 19.15.26.8 NMAC to another category without notice and hearing upon the request and proper showing by the injection well's operator.

[19.15.26.14 NMAC - Rp,19.15.9.707 NMAC, 12/1/08]

19.15.26.15 TRANSFER OF AUTHORITY TO INJECT:

A. Authority to inject granted under a division order is not transferable except upon division approval. An operator may obtain approval of transfer of authority to inject by filing completed form C-145.

B. The division may require the operator to demonstrate mechanical integrity of each injection well that will be transferred prior to approving transfer of authority to inject.

[19.15.26.15 NMAC - Rp, 19.15.9.708 NMAC, 12/1/08]

HISTORY of 19.15.26 NMAC:

History of Repealed Material: 19.15.9 NMAC, Secondary or Other Enhanced Recovery, Pressure Maintenance, Salt Water Disposal, and Underground Storage (filed 11/13/2000) repealed 12/1/08.

NMAC History:

Those applicable portions of 19.15.9 NMAC, Secondary or Other Enhanced Recovery, Pressure Maintenance, Salt Water Disposal, and Underground Storage (Sections 1-6, 701 - 708) (filed 11/13/2000) were replaced by 19.15.26 NMAC, Injection, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 29 RELEASE NOTIFICATION

19.15.29.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.29.1 NMAC - N, 12/1/08]

19.15.29.2 SCOPE: 19.15.29 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.29.2 NMAC - N, 12/1/08]

19.15.29.3 STATUTORY AUTHORITY: 19.15.29 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.

[19.15.29.3 NMAC - N, 12/1/08]

19.15.29.4 DURATION: Permanent.
[19.15.29.4 NMAC - N, 12/1/08]

19.15.29.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.29.5 NMAC - N, 12/1/08]

19.15.29.6 OBJECTIVE: To require persons who operate or control the release or the location of the release to report the unauthorized release of oil, gases, produced water, condensate or oil field waste including regulated NORM, or other oil field related chemicals, contaminants or mixtures of those chemicals or contaminants that occur during drilling, producing, storing, disposing, injecting, transporting, servicing or processing and to establish reporting procedures.
[19.15.29.6 NMAC - N, 12/1/08]

19.15.29.7 DEFINITIONS:

A. "Major release" means:

(1) an unauthorized release of a volume, excluding gases, in excess of 25 barrels;

(2) an unauthorized release of a volume that:

(a) results in a fire;

(b) will reach a watercourse;

(c) may with reasonable probability endanger public health; or

(d) results in substantial damage to property or the environment;

(3) an unauthorized release of gases in excess of 500 MCF; or

(4) a release of a volume that may with reasonable probability be detrimental to water or exceed the standards in Subsections A and B or C of 19.15.30.9 NMAC.

B. "Minor release" means an unauthorized release of a volume, greater than five barrels but not more than 25 barrels; or greater than 50 MCF but less than 500 MCF of gases.
[19.15.29.7 NMAC - Rp, 19.15.3.116 NMAC, 12/1/08]

19.15.29.8 RELEASE NOTIFICATION:

A. The person operating or controlling either the release or the location of the release shall notify the division of unauthorized release occurring during the drilling, producing, storing, disposing, injecting, transporting, servicing or processing of oil, gases, produced water, condensate or oil field waste including regulated NORM, or other oil field related chemicals, contaminants or mixture of the chemicals or contaminants, in accordance with the requirements of 19.15.29 NMAC.

B. The person operating or controlling either the release or the location of the release shall notify the division in accordance with 19.15.29 NMAC with respect to a release from a facility of oil or other water contaminant, in such quantity as may with reasonable probability be detrimental to water or exceed the standards in Subsections A and B or C of 19.15.30.9 NMAC.
[19.15.29.8 NMAC - Rp, 19.15.3.116 NMAC, 12/1/08]

19.15.29.9 REPORTING REQUIREMENTS: The person operating or controlling either the release or the location of the release shall provide notification of releases in 19.15.29.8 NMAC as follows.

A. The person shall report a major release by giving both immediate verbal notice and timely written notice pursuant to Subsections A and B of 19.15.29.10 NMAC.

B. The person shall report a minor release by giving timely written notice pursuant to Subsection B of 19.15.29.10 NMAC.
[19.15.29.9 NMAC - Rp, 19.15.3.116 NMAC, 12/1/08]

19.15.29.10 CONTENTS OF NOTIFICATION:

A. The person operating or controlling either the release or the location of the release shall provide immediate verbal notification within 24 hours of discovery to the division district office for the area within which the release takes place. In addition, the person shall provide immediate verbal notification of a release of a volume that may with reasonable probability be detrimental to water or exceed the standards in Subsections A and B or C of 19.15.30.9 NMAC to the division's environmental bureau chief. The notification shall provide the information required on form C-141.

B. The person operating or controlling either the release or the location of the release shall provide timely written notification within 15 days to the division district office for the area within which the release occurs by completing and filing form C-141. In addition, the person shall provide timely written notification of a release of a volume that may with reasonable probability be detrimental to water or exceed the standards in Subsections A and B or C of 19.15.30.9 NMAC to the division's environmental bureau chief within 15 days after the release is discovered. The written notification shall verify the prior verbal notification and provide appropriate additions or corrections to the information contained in the prior verbal notification.
[19.15.29.10 NMAC - Rp, 19.15.3.116 NMAC, 12/1/08]

19.15.29.11 CORRECTIVE ACTION: The responsible person shall complete division-approved corrective action for releases that endanger public health or the environment. The responsible person shall address releases in accordance with a remediation plan submitted to and approved by the division or with an abatement plan submitted in accordance with 19.15.30 NMAC.
[19.15.29.11 NMAC - Rp, 19.15.3.116 NMAC, 12/1/08]

HISTORY of 19.15.29 NMAC:

History of Repealed Material: 19.15.3 NMAC, Drilling (filed 10/29/2001) repealed 12/1/08.

NMAC History:
That applicable portion of 19.15.3 NMAC, Drilling (Section 116) (filed 10/29/2001) was replaced by 19.15.29 NMAC, Release Notification, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 30 REMEDIATION

19.15.30.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.30.1 NMAC - N, 12/1/08]

19.15.30.2 SCOPE: 19.15.30 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.30.2 NMAC - N, 12/1/08]

19.15.30.3 STATUTORY AUTHORITY: 19.15.30 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Sections 70-2-6, 70-2-11 and 70-2-12.
[19.15.30.3 NMAC - N, 12/1/08]

19.15.30.4 DURATION: Permanent.
[19.15.30.4 NMAC - N, 12/1/08]

19.15.30.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.30.5 NMAC - N, 12/1/08]

19.15.30.6 OBJECTIVE: To abate pollution of subsurface water so that ground water of the state that has a back-

ground concentration of 10,000 mg/l or less TDS is either remediated or protected for use as domestic, industrial and agricultural water supply, and to remediate or protect those segments of surface waters that are gaining because of subsurface-water inflow for uses designated in the water quality standards for interstate and intrastate surface waters in New Mexico, 20.6.4 NMAC; and abate surface-water pollution so that surface waters of the state are remediated or protected for designated or attainable uses as defined in the water quality standards for interstate and intrastate surface waters in New Mexico, 20.6.4 NMAC.

[19.15.30.6 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.7 DEFINITIONS: [RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.30.8 PREVENTION AND ABATEMENT OF WATER POLLUTION:

A. If the background concentration of a water contaminant exceeds the standard or requirement of Subsections A, B or C of 19.15.30.9 NMAC, the responsible person shall abate the pollution to the background concentration.

B. The standards and requirements set forth in of Subsections A, B or C of 19.15.30.9 NMAC are not intended as maximum ranges and concentrations for use, and nothing contained in 19.15.30.9 NMAC limits the use of waters containing higher ranges and concentrations.

[19.15.30.8 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.9 ABATEMENT STANDARDS AND REQUIREMENTS:

A. The responsible person shall abate the vadose zone so that water contaminants in the vadose zone will not with reasonable probability contaminate ground water or surface water, in excess of the standards in Subsections B and C of 19.15.30.9 NMAC, through leaching, percolation or other transport mechanisms, or as the water table elevation fluctuates.

B. The responsible person shall abate ground-water pollution at a place of withdrawal for present or reasonably foreseeable future use, where the TDS concentration is 10,000 mg/l or less, to conform to the following standards:

(1) toxic pollutants as defined in 20.6.2.7 NMAC shall not be present; and

(2) the standards of 20.6.2.3103 NMAC shall be met.

C. The responsible person shall abate surface-water pollution to conform to the water quality standards for interstate and intrastate surface waters in New Mexico, 20.6.4 NMAC.

D. The division shall not consider subsurface-water and surface-water abatement complete until eight consecutive quarterly samples, or an alternate lesser number of samples the director approves, from the compliance sampling stations the director approved meet the abatement standards in Subsections A, B and C of 19.15.30.9 NMAC. The division shall consider abatement of water contaminants measured in solid-matrix samples of the vadose zone complete after one-time sampling from compliance stations the director approves.

E. Technical infeasibility.

(1) If a responsible person is unable to meet the abatement standards set forth in Subsections A and B of 19.15.30.9 NMAC using commercially accepted abatement technology pursuant to an approved abatement plan, the responsible person may propose that abatement standards compliance is technically infeasible.

(a) The director may consider technical infeasibility proposals involving the use of experimental abatement technology.

(b) The responsible person may demonstrate technical infeasibility by a statistically valid extrapolation of the decrease in concentrations of a water contaminant over the remainder of a 20 year period, such that projected future reductions during that time would be less than 20 percent of the concentration at the time the responsible person proposes technical infeasibility. A statistically valid decrease cannot be demonstrated by fewer than eight consecutive quarters.

(c) The technical infeasibility proposal shall include a substitute abatement standard for those contaminants that is technically feasible. The responsible person shall meet abatement standards for other water contaminants not demonstrated to be technically infeasible.

(2) The director shall not approve a proposed technical infeasibility demonstration for a water contaminant if its concentration is greater than 200 percent of the abatement standard for the contaminant.

(3) If the director cannot approve any or all portions of a proposed technical infeasibility demonstration because the water contaminant concentration is greater than 300 percent of the abatement standard for each contaminant, the responsible person may further pursue the issue of technical infeasibility by filing a petition with the division seeking approval of alternate abatement standards pursuant to Subsection F of 19.15.30.9 NMAC.

F. Alternative abatement standards.

(1) At any time during or after the stage 2 abatement plan's submission, the responsible person may file a petition seeking approval of alternative abatement standards for the standards set forth in Subsections A and B of 19.15.30.9 NMAC. The division may approve alternative abatement standards if the petitioner demonstrates that:

(a) either compliance with the abatement standards is not feasible, by the maximum use of technology within the responsible person's economic capability; or there is no reasonable relationship between the economic and social costs and benefits, including attainment of the standards set forth in 19.15.30.9 NMAC to be obtained;

(b) the proposed alternative abatement standards are technically achievable and cost-benefit justifiable; and

(c) compliance with the proposed alternative abatement standard will not create a present or future hazard to public health or undue damage to property.

(2) The responsible person shall file a written petition with the division's environmental bureau chief. The petition may include a transport, fate and risk assessment in accordance with accepted methods, and other information as the petitioner deems necessary to support the petition. The petition shall:

(a) state the petitioner's name and address;

(b) state the date of the petition;

(c) describe the facility or activity for which the petitioner seeks the alternate abatement standards;

(d) state the address or description of the property upon which the facility is located;

(e) describe the water body or watercourse the release affected;

(f) identify the abatement standard from which petitioner wishes to vary;

(g) state why the petitioner believes that compliance with 19.15.30 NMAC will impose an unreasonable burden upon the petitioner's activity;

(h) identify the water contaminant for which the petitioner proposes the alternative standard;

(i) state the alternative standard the petitioner proposes;

(j) identify the three-dimensional body of water pollution for which the petitioner seeks approval; and

(k) state the extent to which the abatement standards set forth in 19.15.30.9 NMAC are now, and will in the future be, violated.

(3) The division's environmental bureau chief shall review the petition and, within 60 days after receiving the petition, submit a written recommendation to the director to approve, approve subject to con-

ditions or disapprove any or all of the proposed alternative abatement standards. The recommendation shall include the reasons for the division's environmental bureau chief's recommendation. The division's environmental bureau chief shall submit a copy of the recommendation to the petitioner by certified mail.

(4) If the division's environmental bureau chief recommends approval, or approval subject to conditions, of any or all of the proposed alternative abatement standards, the division shall hold a public hearing on those standards. If the division's environmental bureau chief recommends disapproval of any or all of the proposed alternative abatement standards, the petitioner may submit a request to the director, within 15 days after the recommendation's receipt, for a public hearing on those standards. If the petitioner does not submit a timely request for hearing, the recommended disapproval shall become a final decision of the director and shall not be subject to review.

(5) If the director grants a public hearing, the division shall conduct the hearing in accordance with division hearing procedures.

(6) Based on the record of the public hearing, the division shall approve, approve subject to condition or disapprove any or all of the proposed alternative abatement standards. The division shall notify the petitioner by certified mail of its decision and the reasons for the decision.

[19.15.30.9 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.10 MODIFICATION OF ABATEMENT STANDARDS: If applicable abatement standards are modified after the division approves the abatement measures, the abatement standards that are in effect at the time that the division approved the abatement measures shall be the abatement standards for the duration of the abatement action, unless the director determines that compliance with those standards may with reasonable probability create a present or future hazard to public health or the environment. In an appeal of the director's determination that additional actions are necessary, the director shall have the burden of proof.

[19.15.30.10 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.11 ABATEMENT PLAN REQUIRED:

A. Unless otherwise provided by 19.15.30 NMAC responsible persons who are abating, or who are required to abate, water pollution in excess of the standards and requirements set forth in 19.15.30.9 NMAC shall do so pursuant to an abatement plan the director approves. When the director has approved an abatement plan, the responsible person's actions leading to and including abatement shall be consistent with the abatement plan's terms and conditions.

B. In the event of a transfer of the ownership, control or possession of a facility for which an abatement plan is required or approved, where the transferor is a responsible person, the transferee also shall be considered a responsible person for the abatement plan's duration, and may jointly share the responsibility to conduct the actions 19.15.30 NMAC requires with other responsible persons.

(1) The transferor shall notify the transferee in writing at least 30 days prior to the transfer that the division has required or approved an abatement plan for the facility, and shall deliver or send by certified mail to the director a copy of the notification together with a certificate or other proof that the transferee has received the notification.

(2) The transferor and transferee may agree to a designated responsible person who shall assume the responsibility to conduct the actions 19.15.30 NMAC requires. The responsible persons shall notify the director in writing if a designated responsible person is agreed upon.

(3) If the director determines that the designated responsible person has failed to conduct the actions 19.15.30 NMAC requires, the director shall notify all responsible persons of this failure in writing and allow them 30 days, or longer for good cause shown, to conduct the required actions before setting a show cause hearing requiring those responsible persons to appear and show cause why they should not be ordered to comply, a penalty should not be assessed, a civil action should not be commenced in district court or the division should not take other appropriate action.

C. If the source of the water pollution to be abated is a facility that operated under a discharge plan, the director may require the responsible person to submit a financial assurance plan that covers the estimated costs to conduct the actions the abatement plan requires. Such a financial assurance plan shall be consistent with financial assurance requirements the division adopts.

[19.15.30.11 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.12 EXEMPTIONS FROM ABATEMENT PLAN REQUIREMENT:

A. Except as provided in Subsection B of 19.15.30.12 NMAC, 19.15.30.11 NMAC and 19.15.30.13 NMAC do not apply to a person who is abating water pollution:

(1) from an underground storage tank, under the authority of the New Mexico environmental improvement board's underground storage tank rules, 20.5 NMAC, or in accordance with the Ground Water Protection Act, NMSA 1978, Section 74-6B-1 *et seq.*;

(2) under the EPA's authority pursuant to either the Federal Comprehensive Environmental Response, Compensation and Liability Act, and amendments, or RCRA;

(3) pursuant to the New Mexico environmental improvement board's hazardous waste management rule, 20.4.1 NMAC;

(4) under the authority of the United States nuclear regulatory commission or the United States department of energy pursuant to the Atomic Energy Act;

(5) under the authority of a ground-water discharge plan the director approved, provided that such abatement is consistent with the requirements and provisions of 19.15.30.8 NMAC, 19.15.30.9 NMAC, Subsections C and D of 19.15.30.13 NMAC, 19.15.30.14 NMAC and 19.15.30.19 NMAC;

(6) under the authority of a letter of understanding, settlement agreement or administrative order on consent or other agreement signed by the director or director's designee prior to March 15, 1997, provided that abatement is being performed in compliance with the terms of the letter of understanding, settlement agreement or administrative order or other agreement on consent; and

(7) on an emergency basis, or while abatement plan approval is pending, or in a manner that will likely result in compliance with the standards and requirements set forth in 19.15.30.9 NMAC within one year after notice is required to be given pursuant to 19.15.29.9 NMAC provided that the division does not object to the abatement action.

B. If the director determines that abatement of water pollution subject to Subsection A of 19.15.30.12 NMAC will not met the standards of Subsections B and C of 19.15.30.9 NMAC, or that additional action is necessary to protect health, welfare, environment or property, the director may notify a responsible person, by certified mail, to submit an abatement plan pursuant to 19.15.30.11 NMAC and Subsection A of 19.15.30.14 NMAC. The notification shall state the reasons for the director's determination. In an appeal of the director's determination under Subsection B of 19.15.30.12 NMAC, the director shall have the burden of proof.

[19.15.30.12 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.13 ABATEMENT PLAN PROPOSAL:

A. Except as provided for

in 19.15.30.12 NMAC a responsible person shall, within 60 days of receipt of the director's written notice that the division requires an abatement plan, submit an abatement plan proposal to the director for approval. The responsible person may submit stage 1 and stage 2 abatement plan proposals together. For good cause shown, the director may allow for a total of 120 days to prepare and submit the abatement plan proposal.

B. Voluntary abatement.

(1) A person wishing to abate water pollution in excess of the standards and requirements set forth in 19.15.30.9 NMAC may submit a stage 1 abatement plan proposal to the director for approval. Following the director's approval of a final site investigation report prepared pursuant to stage 1 of an abatement plan, a person may submit a stage 2 abatement plan proposal to the director for approval.

(2) Following approval of a stage 1 or stage 2 abatement plan proposal under Paragraph (1) of Subsection B of 19.15.30.13 NMAC the person submitting the approved plan shall be a responsible person under 19.15.30 NMAC for the purpose of performing the approved stage 1 or stage 2 abatement plan. Nothing in 19.15.30 NMAC precludes the director from applying 19.15.29.11 NMAC to a responsible person if applicable.

C. Stage 1 abatement plan. The stage 1 of the abatement plan's purpose is to design and conduct a site investigation that adequately defines site conditions, and provide the data necessary to select and design an effective abatement option. Stage 1 of the abatement plan may include the following information depending on the media affected, and as needed to select and implement an expeditious abatement option:

(1) descriptions of the site, including a site map, and of site history including the nature of the release that caused the water pollution, and a summary of previous investigations;

(2) site investigation work plan that defines:

(a) site geology and hydrogeology; the vertical and horizontal extent and magnitude of vadose-zone and groundwater contamination; subsurface hydraulic conductivity; transmissivity, storativity and rate and direction of contaminant migration; inventory of water wells inside and within one mile from the perimeter of the three-dimensional body where the standards set forth in Subsection C of 19.15.30.9 NMAC are exceeded; and location and number of wells the pollution actually or potentially affects; and

(b) surface water hydrology, seasonal stream flow characteristics, ground water/surface water relationships, the vertical and horizontal extent and magnitude of contamination and impacts to surface water and stream sediments; the magnitude of contamination and impacts on surface water may be, in part, defined by conducting a biological assessment of fish, benthic macro invertebrates and other wildlife populations; seasonal variations should be accounted for when conducting these assessments;

(3) monitoring program, including sampling stations and frequencies, for the abatement plan's duration that may be modified, after the director's approval, as the responsible person creates additional sampling stations;

(4) quality assurance plan, consistent with the sampling and analytical techniques listed in Subsection B of 20.6.2.3107 NMAC and with 20.6.4.14 NMAC of the water quality standards for interstate and intrastate surface waters in New Mexico, for all work to be conducted pursuant to the abatement plan;

(5) a schedule for stage 1 abatement plan activities, including the submission of summary quarterly progress reports, and the submission, for the director's approval, of a detailed final site investigation report; and

(6) additional information that may be required to design and perform an adequate site investigation.

D. Stage 2 abatement plan.

(1) A responsible person shall submit a stage 2 abatement plan proposal to the director for approval within 60 days, or up to 120 days for good cause shown, after the director's approval of the final site investigation report prepared pursuant to stage 1 of the abatement plan. The responsible person may submit a stage 1 and 2 abatement plan proposal together. Stage 2 of the abatement plan's purpose is to select and design, if necessary, an abatement option that, when implemented, results in attainment of the abatement standards and requirements set forth in 19.15.30.9 NMAC, including post-closure maintenance activities.

(2) Stage 2 of the abatement plan should include, at a minimum, the following information:

(a) a brief description of the current situation at the site;

(b) development and assessment of abatement options;

(c) a description, justification and design, if necessary, of the preferred abatement option;

(d) modification, if necessary, of the monitoring program the director approved pursuant to stage 1 of the abatement plan, including the designation of pre- and post-abatement-completion sampling stations and sampling frequencies to be used to demonstrate compliance with the standards and requirements set forth in 19.15.30.9 NMAC;

(e) site maintenance activities, if needed, the responsible person proposes to perform after abatement activities terminate;

(f) a schedule for the duration of abatement activities, including the submission of summary quarterly progress reports;

(g) a public notification proposal designed to satisfy the requirements of Subsections B and C of 19.15.30.15 NMAC; and

(h) additional information that may be reasonably required to select, describe, justify and design an effective abatement option.

[19.15.30.13 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.14 OTHER REQUIREMENTS:

A. A responsible person shall allow the director's authorized representative upon presentation of proper credentials and with reasonable prior notice to:

(1) enter the facility at reasonable times;

(2) inspect and copy records an abatement plan requires;

(3) inspect treatment works, monitoring and analytical equipment;

(4) sample wastes, ground water, surface water, stream sediment, plants, animals or vadose-zone material including vadose-zone vapor;

(5) use monitoring systems and wells under the responsible person's control in order to collect samples of media listed in Paragraph (4) of Subsection A of 19.15.30.14 NMAC; and

(6) gain access to off-site property the responsible person does not own or control, but is accessible to the responsible person through a third-party access agreement, provided that the agreement allows it.

B. A responsible person shall provide the director, or director's representative, with at least four working days advance notice of sampling to be performed pursuant to an abatement plan, or a well plugging, abandonment or destruction at a facility where the division has required an abatement plan.

C. A responsible person wishing to plug, abandon or destroy a monitoring or water supply well within the perimeter of the three-dimensional body where the standards set forth in Subsection B of 19.15.30.9 NMAC are exceeded, at a facility where the division has required an abatement plan, shall propose such action by certified mail to the director for approval, unless the state engineer's approval is required. The responsible per-

son shall design the proposed action to prevent water pollution that could result from water contaminants migrating through the well or bore hole. The proposed action shall not take place without the director's written approval, unless the responsible person does not receive written approval or disapproval within 30 days after the date the director receives the proposal.

[19.15.30.14 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.15 PUBLIC NOTICE AND PARTICIPATION:

A. Prior to public notice, the applicant shall give written notice, as approved by the division, of stage 1 and stage 2 abatement plans to the following persons:

(1) surface owners of record within one mile of the perimeter of the geographic area where the standards and requirements set forth in 19.15.30.9 NMAC are exceeded;

(2) the county commission where the geographic area where the standards and requirements set forth in 19.15.30.9 NMAC are exceeded is located;

(3) the appropriate city officials if the geographic area where the standards and requirements set forth in 19.15.30.9 NMAC are exceeded is located or is partially located within city limits or within one mile of the city limits;

(4) those persons, the director identifies, who have requested notification, who shall be notified by mail;

(5) the New Mexico trustee for natural resources, and other local, state or federal governmental agencies affected, as the director identifies, which shall be notified by certified mail;

(6) the governor or president of a tribe, pueblo or nation if the geographic area where the standards and requirements set forth in 19.15.30.9 NMAC are exceeded is located or is partially located within tribal boundaries or within one mile of the tribal boundaries, who shall be notified by certified mail;

(7) the director may extend the distance requirements for notice if the director determines the proposed abatement plan has the potential to adversely impact public health or the environment at a distance greater than one mile. The director may require additional notice as needed. The applicant shall furnish a copy and proof of the notice to the division.

B. Within 15 days after the division determines that a stage 1 abatement plan or a stage 2 abatement plan is administratively complete, the responsible person shall issue public notice in a division-approved form in a newspaper of general circulation in the county in which the release occurred, and in a newspaper of general circulation in the state. For the purposes of Subsection B of 19.15.30.15 NMAC, an administratively complete stage 1 abatement plan is a document that satisfies the requirements of Subsection C of 19.15.30.13 NMAC and an administratively complete stage 2 abatement plan is a document that satisfies the requirements of Paragraph (2) of Subsection D of 19.15.30.13 NMAC. The public notice shall include, as approved in advance by the director:

(1) the responsible person's name and address;

(2) the location of the proposed abatement;

(3) a brief description of the source, extent and estimated volume of release; whether the release occurred into the vadose zone, ground water or surface water; and a description of the proposed stage 1 or stage 2 abatement plan;

(4) a brief description of the procedures the director followed in making a final determination;

(5) a statement that the public may view a copy of the abatement plan at the division's Santa Fe office or at the division's district office for the area in which the release occurred, and a statement describing how the public can access the abatement plan electronically from a division-maintained site if such access is available;

(6) a statement that the division will accept the following comments and requests for consideration if the director receives them within 30 days after the date of publication of the public notice:

(a) written comments on the abatement plan; and

(b) for a stage 2 abatement plan, written requests for a public hearing that include reasons why a hearing should be held; and

(7) an address and phone number at which interested persons may obtain further information.

C. A person seeking to comment on a stage 1 abatement plan, or to comment or request a public hearing on a stage 2 abatement plan, shall file written comments or hearing requests with the division within 30 days after the date of public notice, or within 30 days after the director receives a proposed significant modification of a stage 2 abatement plan. Requests for a public hearing shall set forth the reasons why a hearing should be held. The division shall hold a public hearing if the director determines that there is significant public interest or that the request has technical merit.

D. The division shall distribute notice of an abatement plan's filing with the next division and commission hearing docket following the plan's receipt.

[19.15.30.15 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.16 DIRECTOR APPROVAL OR NOTICE OF DEFICIENCY OF SUBMITTALS:

A. The director shall, within 60 days after receiving an administratively complete stage 1 abatement plan, a site investigation report, a technical infeasibility demonstration or an abatement completion report approve the document, or notify the responsible person of the document's deficiency, based upon the information available.

B. If the division does not hold a public hearing pursuant to Subsection C of 19.15.30.15 NMAC then the director shall, within 90 days after receiving a stage 2 abatement plan proposal, approve the plan, or notify the responsible person of the plan's deficiency, based upon the information available.

C. If the division holds a public hearing pursuant to Subsection C of 19.15.30.15 NMAC then the director shall, within 60 days after receiving the required information, approve stage 2 of the abatement plan proposal, or notify the responsible person of the plan's deficiency, based upon the information contained in the plan and the information submitted at the hearing.

D. If the director notifies a responsible person of a deficiency in a site investigation report, or in a stage 1 or stage 2 abatement plan proposal, the responsible person shall submit a modified document to cure the deficiencies the director specifies within 30 days after receiving the notice of deficiency. The responsible person is in violation of 19.15.30 NMAC if the responsible person fails to submit a modified document within the required time, or if the responsible person does not in the modified document make a good faith effort to cure the deficiencies the director specified.

E. Provided that the responsible person meets the other requirements of 19.15.30 NMAC and provided further that stage 2 of the abatement plan, if implemented, shall result in the standards and requirements set forth in 19.15.30.9 NMAC being met within a schedule that is reasonable given the site's particular circumstances, the director shall approve the plan.

[19.15.30.16 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.17 INVESTIGATION AND ABATEMENT: A responsible person who receives the division's approval for stage 1 or stage 2 of an abatement plan shall conduct investigation, abatement, monitoring and reporting activities in compliance with 19.15.30 NMAC and according to the

terms and schedules contained in the approved abatement plans.
[19.15.30.17 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.18 ABATEMENT PLAN MODIFICATION:

A. The division may modify an approved abatement plan at the responsible person's written request in accordance with 19.15.30 NMAC with the director's written approval.

B. If data the responsible person submitted pursuant to monitoring requirements specified in the approved abatement plan or other information available to the director indicates that the abatement action is ineffective, or is creating unreasonable injury to or interference with health, welfare, environment or property, the director may require a responsible person to modify an abatement plan within the shortest reasonable time so as to effectively abate water pollution that exceeds the standards and requirements set forth in 19.15.30.9 NMAC, and to abate and prevent unreasonable injury to or interference with health, welfare, environment or property.
[19.15.30.18 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.19 COMPLETION AND TERMINATION:

A. The division shall consider abatement complete when the responsible person meets the standards and requirements set forth in 19.15.30.9 NMAC. At that time, the responsible person shall submit an abatement completion report, documenting compliance with the standards and requirements set forth in 19.15.30.9 NMAC, to the director for approval. The abatement completion report also shall propose changes to long-term monitoring and site maintenance activities, if needed, to be performed after the abatement plan's termination.

B. Provided that the responsible person meets the other requirements of 19.15.30 NMAC and provided further that the responsible person has met the standards and requirements set forth in 19.15.30.9 NMAC, the director shall approve the abatement completion report. When the director approves the abatement completion report, the director shall also notify the responsible person in writing that the abatement plan is terminated.
[19.15.30.19 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.20 DISPUTE RESOLUTION: In the event of a technical dispute regarding the requirements of 19.15.29 NMAC, 19.15.30.9 NMAC, 19.15.30.12 NMAC, 19.15.30.13 NMAC, 19.15.30.18 NMAC or 19.15.30.19 NMAC, including notices of deficiency, the responsible person may notify the director by certified mail that a dispute has arisen, and the responsible person desires to invoke the dispute resolution provisions of 19.15.30.20 NMAC provided that the responsible person shall send the notification within 30 days after the responsible person receives the director's decision that causes the dispute. Upon the notification, the deadlines affected by the technical dispute shall be extended for a 30 day negotiation period, or for a maximum of 60 days if approved by the director for good cause shown. During this negotiation period, the director or the director's designee and the responsible person shall meet at least once. A mutually agreed upon third part may facilitate the meeting, but the third party shall assume no power or authority granted or delegated to the director by the Oil and Gas Act or by the division or commission. If the dispute remains unresolved after the negotiation period, the director's decision shall be final.
[19.15.30.20 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.21 APPEALS FROM DIRECTOR'S AND DIVISION'S DECISIONS:

A. If the director

(1) determines that an abatement plan is required pursuant to 19.15.29.11 NMAC;

(2) approves or provides notice of deficiency of a proposed abatement plan, technical infeasibility demonstration or abatement completion report; or

(3) modifies or terminates an approved abatement plan

the director shall provide written notice of the action by certified mail to the responsible person and other persons who participated in the action.

B. A person who participated in the action before the director and that the action listed in Subsection A of 19.15.30.21 NMAC adversely affects may file a petition requesting a hearing before a division examiner.

C. The person shall make the petition in writing and file it with the division within 30 days after receiving notice of the director's action. The petition shall specify the portions of the action to which the petitioner objects, certify that the person has mailed or hand-delivered a copy of the petition to the director and to the applicant or permittee if the petitioner is not the applicant or permittee and have attached a copy of the action for which the person seeks review. Unless a person makes a timely petition for hearing, the director's action is final.

D. The hearing before the division shall be conducted in the same manner as other division hearings.

E. The petitioner shall pay the cost of the court reporter for the hearing.

F. A party adversely affected by a division order pursuant to a hearing held by a division examiner, shall have a right to have the matter heard de novo before the commission.

G. The appeal provisions do not relieve the owner, operator or responsible person of their obligations to comply with federal or state laws including regulations or rules.
[19.15.30.21 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

HISTORY of 19.15.30 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions and Definitions (filed 04/27/2001) repealed 12/1/08.

NMAC History:
That applicable portion of 19.15.1 NMAC, General Provisions and Definitions (Section 19) (filed 04/27/2001) was replaced by 19.15.30 NMAC, Remediation, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 34 PRODUCED WATER

19.15.34.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.34.1 NMAC - N, 12/1/08]

19.15.34.2 SCOPE: 19.15.34 NMAC applies to persons engaged in transporting produced water, drilling fluids or other oil liquid oil field waste or having them transported or in disposing of produced water or oil field waste within New Mexico.
[19.15.34.2 NMAC - N, 12/1/08]

19.15.34.3 STATUTORY AUTHORITY: 19.15.34 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-12, which authorizes the division to regulate the disposition of water produced or used in connection with the drilling for or producing of oil or gas and to direct surface or subsurface disposal of the water.
[19.15.34.3 NMAC - N, 12/1/08]

19.15.34.4 DURATION: Permanent.
[19.15.34.4 NMAC - N, 12/1/08]

19.15.34.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.34.5 NMAC - N, 12/1/08]

19.15.34.6 OBJECTIVE: To establish procedures by which persons may transport produced water, drilling fluids and other liquid oil field waste and dispose of produced water or other oil field waste.
[19.15.34.6 NMAC - N, 12/1/08]

19.15.34.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]

19.15.34.8 TRANSPORTATION OF PRODUCED WATER, DRILLING FLUIDS AND OTHER LIQUID OIL FIELD WASTE:

A. A person shall not transport produced water, drilling fluids or other liquid oil field waste, including drilling fluids and residual liquids in oil field equipment, except for small samples removed for analysis, by motor vehicle from a lease, central tank battery or other facility without an approved form C-133, authorization to move liquid waste. The transporter shall maintain a photocopy of the approved form C-133 in the transporting vehicle.

B. A person may apply for authorization to move produced water, drilling fluids or other liquid oil field waste by filing a complete form C-133 with the division's Santa Fe office. Authorization is granted upon the division's approval of form C-133.

C. An owner or operator shall not permit produced water, drilling fluids or other liquid oil field waste to be removed from its leases or field facilities, except for small samples removed for analysis, by motor vehicle except by a person possessing an approved form C-133. The division shall post a list of currently approved form C-133s, authorization to move liquid waste, on its website. The list of form C-133s posted on the division's website on the first business day of each month shall be deemed notice of valid form C-133s for the remainder of that month.
[19.15.34.8 NMAC - Rp, 19.15.2.51 NMAC, 12/1/08]

19.15.34.9 DENIAL OF A FORM C-133: The division may deny approval of a form C-133 if:

A. the applicant is a corporation or limited liability company, and is not registered with the public regulation commission to do business in New Mexico;

B. the applicant is a limited partnership, and is not registered with the New Mexico secretary of state to do business in New Mexico;

C. the applicant does not possess a carrier permit under the single state registration system the public regulation commission administers, if it is required to have such a permit under applicable statutes or rules; or

D. the applicant or an officer, director or partner in the applicant, or a person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that possesses or has possessed an approved form C-133 that has been cancelled or suspended, has a history of violating division rules or other state or federal environmental laws; is subject to a commission or division order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty.
[19.15.34.9 NMAC - Rp, 19.15.2.51 NMAC, 12/1/08]

19.15.34.10 CANCELLATION OR SUSPENSION OF AUTHORIZATION TO MOVE LIQUID WASTES: A transporter's vehicular movement or disposition of produced water, drilling fluids or other liquid oil field wastes in a manner contrary to division rules is a ground for denial of approval of form C-133 in addition to the those specified in Subsection D of 19.15.34.9 NMAC. It is also cause, after notice and an opportunity for hearing, for the division to cancel or suspend a transporter's authorization to move liquid wastes.
[19.15.34.10 NMAC - Rp, 19.15.2.51 NMAC, 12/1/08]

19.15.34.11 DISPOSITION OF PRODUCED WATER AND OTHER OIL FIELD WASTE: Except as authorized by 19.15.30 NMAC, 19.15.17 NMAC, 19.15.36 NMAC, 19.15.29 NMAC or 19.15.26.8 NMAC, persons, including transporters, shall not dispose of produced water or other oil field waste:

(1) on or below the surface of the ground; in a pit; or in a pond, lake, depression or watercourse;

(2) in another place or in a manner that may constitute a hazard to fresh water, public health, safety or the environment; or

(3) in a permitted pit or registered or permitted surface waste management facility without the permission of the owner or operator of the pit or facility.
[19.15.34.11 NMAC - Rp, 19.15.2.52 NMAC, 12/1/08]

19.15.34.12 METHODS FOR DISPOSAL OF PRODUCED WATER: Persons disposing of produced water shall use one of the following disposition methods:

A. disposition in a manner that does not constitute a hazard to fresh water, public health, safety or the environment; delivery to a permitted salt water disposal well or facility, secondary recovery or pressure maintenance injection facility, surface waste management facility or permanent pit permitted pursuant to 19.15.17 NMAC; or to a drill site for use in drilling fluid; or

B. use in accordance with a division-issued use permit or other division authorization.
[19.15.34.12 NMAC - Rp, 19.15.2.52 NMAC, 12/1/08]

19.15.34.13 METHODS FOR DISPOSAL OF OTHER OIL FIELD WASTE: Persons shall dispose of other oil field waste by transfer to an appropriate permitted or registered surface waste management facility or injection facility or applied to a division-authorized beneficial use. Persons may transport recovered drilling fluids to other drill sites for reuse provided that such fluids are transported and stored in a manner that does not constitute a hazard to fresh water, public health, safety or the environment.
[19.15.34.13 NMAC - Rp, 19.15.2.52 NMAC, 12/1/08]

HISTORY of 19.15.34 NMAC:

History of Repealed Material: 19.15.2 NMAC, General Operating Practices, Wastes Arising from Exploration and Production (filed 04/21/2004) repealed 12/1/08.

NMAC History:
Those applicable portions of 19.15.2 NMAC, General Operating Practices, Wastes Arising from Exploration and Production (Sections 51 and 52) (filed 01/24/2007) were replaced by 19.15.34 NMAC, Produced Water, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 35 WASTE DISPOSAL

19.15.35.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.35.1 NMAC - Rp, 19.15.9.1 NMAC, 12/1/08]

19.15.35.2 SCOPE: 19.15.35 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.35.2 NMAC - Rp, 19.15.9.2 NMAC, 12/1/08]

19.15.35.3 STATUTORY AUTHORITY: 19.15.35 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12, which authorizes the division to regulate the disposition of non-domestic waste resulting from the exploration, development, production or storage of oil or gas; from the oil field service industry; the transportation of oil or gas; the treatment of gas; or the refinement of oil.
[19.15.35.3 NMAC - Rp, 19.15.9.3 NMAC, 12/1/08]

19.15.35.4 DURATION: Permanent.
[19.15.35.4 NMAC - Rp, 19.15.9.4 NMAC, 12/1/08]

19.15.35.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.35.5 NMAC - Rp, 19.15.9.5 NMAC, 12/1/08]

19.15.35.6 OBJECTIVE: To establish procedures for the disposal of certain non-domestic waste at solid waste facilities permitted by the New Mexico environment department and for the disposal of regulated NORM associated with the oil and gas industry.
[19.15.35.6 NMAC - Rp, 19.15.9.6 NMAC, 12/1/08]

19.15.35.7 DEFINITIONS:

A. "Discharge plan" means a plan the operator submits and the division approves pursuant to NMSA 1978, Section 70-2-12(B)(22) and WQCC rules.

B. "EPA clean" means the cleanliness standards established by the EPA in 40 C.F.R. section 261.7(b).

C. "NESHAP" means the National Emission Standards for Hazardous Air Pollutants of the EPA, 40 C.F.R. Part 61.

D. "Solid waste facility" means a facility permitted or authorized as a solid waste facility by the New Mexico environment department pursuant to the Solid Waste Act, NMSA 1978, Sections 74-9-1 *et seq.* and New Mexico environmental improvement board rules to accept industrial solid waste or other special waste.

E. "TCLP" means the testing protocol established by the EPA in 40 C.F.R. Part 261, entitled "Toxicity Characteristic Leaching Procedure" or an alternative hazardous constituent analysis the division has approved.

F. "Waste" means non-domestic waste resulting from the exploration, development, production or storage of oil or gas pursuant to NMSA 1978, Section 70-2-12(B)(21) and non-domestic waste arising from the oil field service industry, and certain non-domestic waste arising from the transportation, treatment or refinement of oil or gas pursuant to NMSA 1978, Section 70-2-12(B)(22).
[19.15.35.7 NMAC - Rp, 19.15.9.712 NMAC, 12/1/08]

19.15.35.8 DISPOSAL OF CERTAIN NON-DOMESTIC WASTE AT SOLID WASTE FACILITIES:

A. A person may dispose of certain non-domestic waste arising from the exploration, development, production or storage of oil or gas; certain non-domestic waste arising from the oil field service industry; and certain non-domestic waste arising from oil or gas' transportation, treatment or refinement at a solid waste facility in accordance with 19.15.35.8 NMAC.

B. Procedure.

(1) A person may dispose of waste listed in Paragraph (1) of Subsection D of 19.15.35.8 NMAC at a solid waste facility without the division's prior written authorization.

(2) A person may dispose of waste listed in Paragraph (2) of Subsection D of 19.15.35.8 NMAC at a solid waste facility after testing and the division's prior written authorization. Before the division grants authorization, the applicant for the authorization shall provide copies of test results to the division and to the solid waste facility where the applicant will dispose of the waste. In appropriate cases and so long as a representative sample is tested, the division may authorize disposal of a waste stream listed in Paragraph (2) of Subsection D of 19.15.35.8 NMAC without individual testing of each delivery.

(3) A person may dispose of waste listed in Paragraph (3) of Subsection D of 19.15.35.8 NMAC at a solid waste facility on a case-by-case basis after testing the division may require and the division's prior written authorization. Before the division grants authorization, the applicant for the authorization shall provide copies of test results to the division and to the solid waste facility where it will dispose of the waste.

(4) Simplified procedure for holders of discharge plans. Holders of an approved discharge plan may amend the discharge plan to provide for disposal of waste listed in Paragraph (2) of Subsection D of 19.15.35.8 NMAC and, as applicable, Paragraph (3) of Subsection D of 19.15.35.8 NMAC. If the division approves the amendment to the discharge plan, the holder may dispose of wastes listed in Paragraphs (2) and (3) of Subsection D of 19.15.35.8 NMAC at a solid waste facility without obtaining the division's prior written authorization.

C. The following provisions apply to the types of waste described below as specified.

(1) The person disposing of the waste does not have to test the following waste before disposal:

(a) barrels, drums, five-gallon buckets or one-gallon containers so long as they are empty and EPA-clean;

(b) uncontaminated brush and vegetation arising from clearing operations;

(c) uncontaminated concrete;

(d) uncontaminated construction debris;

(e) non-friable asbestos and asbestos contaminated waste material, so long as the disposal complies with applicable federal regulations and state rules for non-friable asbestos materials and so long as the facility operator removes the asbestos from steel pipes and boilers and, if applicable, recycles the steel;

(f) detergent buckets, so long as the buckets are completely empty;

(g) fiberglass tanks so long as the tank is empty, cut up or shredded and EPA clean;

(h) grease buckets, so long as empty and EPA clean;

(i) uncontaminated ferrous sulfate or elemental sulfur so long as recovery and sale as a raw material is not possible;

(j) metal plate and metal cable;

(k) office trash;

(l) paper and paper bags, so long as the paper bags are empty;

(m) plastic pit liners, so long as the person cleans them well;

(n) soiled rags or gloves, which if wet pass the paint filter test prior to disposal; or

(o) uncontaminated wood pallets.

(2) The person disposing of the waste shall test the following wastes for the substances indicated prior to disposal:

(a) activated alumina for TPH and BTEX;

(b) activated carbon for TPH and BTEX;

(c) amine filters, which the facility operator air-dries for at least 48 hours before testing, for BTEX;

(d) friable asbestos and asbestos-contaminated waste material, which the facility operator removes asbestos from steel pipes and boilers and, if applicable, recycles the steel before disposal, where the disposal otherwise complies with applicable federal regulations and state rules for friable asbestos materials pursuant to NESHAP;

(e) cooling tower filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for TCLP/chromium;

(f) dehydration filter media, which the facility operator drains and then air-dries for at least 48 hours before testing, for TPH and BTEX;

(g) gas condensate filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for BTEX;

(h) glycol filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for BTEX;

(i) iron sponge, which the facility operator oxidizes completely, for ignitability testing;

(j) junked pipes, valves and metal pipe for NORM;

(k) molecular sieves, which the facility operator cools in a non-hydrocarbon inert atmosphere and hydrates in ambient air for at least 24 hours before testing, for TPH and BTEX;

(l) pipe scale and other deposits removed from pipeline and equipment for TPH, TCLP/metals and NORM;

(m) produced water filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for corrosivity;

(n) sandblasting sand for TCLP/metals or, if the division requires, TCLP/total metals; or

(o) waste oil filters, which the facility operator drains thoroughly of oil at least 24 hours before testing and recycles the oil and metal parts, for TCLP/metals.

(3) A person may dispose of the following wastes on a case-by-case basis with the division's approval:

(a) sulfur contaminated soil;

(b) catalysts;

(c) contaminated soil other than petroleum contaminated soil;

(d) petroleum contaminated soil in the event of a director-declared emergency;

(e) contaminated concrete;

(f) demolition debris not otherwise specified in 19.15.35.8 NMAC;

(g) unused dry chemicals; in addition to testing the division requires, the person applying for division approval shall forward a copy of the material safety data sheet to the division and the solid waste facility on each chemical proposed for disposal;

(h) contaminated ferrous sulfate or elemental sulfur;

(i) unused pipe dope;

(j) support balls;

(k) tower packing materials;

(l) contaminated wood pallets;

(m) partial sacks of unused drilling mud; in addition to testing the division requires, the person applying for division approval shall forward a copy of the material safety data sheet to division and the solid waste facility at which the it will dispose of the partial sacks; or

(n) other wastes as applicable.

D. Testing.

(1) The person applying for division approval to dispose of waste in a solid waste facility shall conduct testing required by 19.15.35.8 NMAC according to the Test Methods for Evaluating Solid Waste, EPA No. SW-846 and shall direct questions concerning the standards or a particular testing facility to the division.

(2) The testing facility shall conduct testing according to the test method listed:

(a) TPH: EPA method 418.1 or 8015 (DRO and GRO only) or an alternative, division-approved hydrocarbon analysis;

(b) TCLP: EPA Method 1311 or an alternative hazardous constituent analysis approved by the division;

(c) paint filter test: EPA Method 9095A;

(d) ignitability test: EPA Method 1030;

(e) corrosivity: EPA Method 1110;

(f) reactivity: test procedures and standards the division establishes on a case-by-case basis; and

(g) NORM. 20.3.14 NMAC.

(3) To be eligible for disposal pursuant to 19.15.35.8 NMAC, the concentration of substances the testing facility identifies during testing shall not exceed the following limits:

(a) benzene: 9.99 mg/kg;

(b) BTEX: 499.99 mg/kg (sum of all);

(c) TPH: 1000 mg/kg;

(d) hazardous air pollutants: the standards set forth in NESHAP; and

(e) TCLP:

(i) arsenic: 5 mg/l,

(ii) barium: 100 mg/l,

(iii) cadmium: 1 mg/l,

(iv) chromium: 5 mg/l,

(v) lead: 5 mg/l,

(vi) mercury: 0.2 mg/l,

(vii) selenium: 1 mg/l, and

(viii) silver: 5 mg/l.

[19.15.35.8 NMAC - Rp, 19.15.9.712 NMAC, 12/1/08]

19.15.35.9 DISPOSAL OF REGULATED NORM: A person disposing of regulated NORM, as defined at 19.15.2.7 NMAC, is subject to 19.15.35.9 NMAC through 19.15.35.14 NMAC and to New Mexico environmental improvement board rule, 20.3.14 NMAC.

[19.15.35.9 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

19.15.35.10 NON-RETRIEVED FLOWLINES AND PIPELINES:

A. The division shall consider a proposal from an operator for leaving flowlines and pipelines (hereinafter "pipeline") that contain regulated NORM in the ground provided the operator performs the abandonment procedures in a manner to protect the environment, public health and fresh waters. Division approval is contingent on the applicant meeting the following requirements as a minimum.

B. An application the applicant submits to the division shall contain the following as a minimum:

(1) the pipeline layout over its entire length on a form C-102 including the legal description of the location of both ends and surface ownership along the pipeline;

(2) results of a radiation survey the applicant conducts at all accessible points and a surface radiation survey along the complete pipeline route in a division-approved form; surveys conducted consistent with division-approved procedures;

(3) the type of material for which the applicant or any predecessor operator used the pipeline;

(4) the procedure the applicant will use for flushing hydrocarbons or produced water from the pipeline;

(5) an explanation as to why it is more beneficial to leave the pipeline in the ground than to retrieve it; and

(6) proof the applicant has sent notice of the proposed abandonment to all surface owners where the pipeline is located; the director may require the applicant to send additional notification as described in 19.15.35.14 NMAC.

C. Upon division approval of the application, the operator shall notify the appropriate division district office at least 24 hours prior to beginning work on the pipeline abandonment.

D. As a condition of completion of the pipeline abandonment, the

operator shall permanently cap all accessible points.

E. An operator shall not place additional regulated NORM in a pipeline to be abandoned under 19.15.35.10 NMAC other than that which accumulated in the pipeline under the pipeline's normal operation.

F. An operator may abandon a pipeline that does not exhibit regulated NORM pursuant to required surveys without an application pursuant to 19.15.35.10 NMAC in accordance with the operator's applicable lease agreements.

G. If a pipeline's appurtenance contains regulated NORM, but upon the appurtenance's removal, no accessible point or surface above the pipeline exhibits the presence of regulated NORM, then the applicant shall submit to the division the information regarding the regulated NORM in the appurtenance and a statement concerning that regulated NORM's management. With respect to the pipeline left in the ground, the applicant is subject to the requirements of 19.15.35.10 NMAC with the exception of Paragraph (6) of Subsection B of 19.15.35.10 NMAC.

[19.15.35.10 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

19.15.35.11 COMMERCIAL OR CENTRALIZED SURFACE WASTE MANAGEMENT FACILITIES:

A. The division shall consider proposals for the disposal of regulated NORM in commercial or centralized surface waste management facilities, provided the applicant performs the disposal in a manner that protects the environment, public health and fresh waters. Division approval is contingent on the applicant obtaining a permit in accordance with 19.15.36 NMAC for the facility and complying with additional requirements specifically related to regulated NORM disposal as described in Subsections B through D of 19.15.35.11 NMAC.

B. The division shall set requests for permission to receive and dispose of regulated NORM in commercial or centralized surface waste management facilities for hearing in order for the facility's operator to obtain or modify a permit in accordance with 19.15.36 NMAC. The division shall consider a request to dispose of regulated NORM at a facility previously permitted under 19.15.36 NMAC a major modification to that facility. The facility's operator shall submit a hearing request to the division that contains the following at a minimum:

(1) complete plans for the facility, including the sources of regulated NORM, radiation survey readings, quantities of regulated NORM to be disposed and monitoring proposals;

(2) a copy of this permit for the facility, if the division has issued one;

(3) proof of public notice of the application as required by 19.15.36 NMAC; and

(4) evidence of issuance of a specific license pursuant to 20.3.14 NMAC, a license pursuant to 20.3.13 NMAC and other authorizations required by law.

C. The division shall establish operating procedures that are protective of the environment, public health and fresh waters in its order.

D. A person desiring to dispose of regulated NORM in an approved commercial or centralized surface waste management facility shall furnish regulated NORM information to the facility's operator sufficient for the operator to submit form C-138 for division approval. The facility operator shall receive division approval prior to receiving the regulated NORM at the disposal facility.

[19.15.35.11 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

19.15.35.12 DOWNHOLE DISPOSAL IN WELLS TO BE PLUGGED AND ABANDONED:

A. The division shall consider proposals from an operator for downhole disposal of regulated NORM in wells that are to be plugged and abandoned, provided the operator performs the plugging and abandonment procedures in a manner that protects the environment, public health and fresh waters and in accordance with division rules pertaining to well plugging and abandonment.

B. The applicant shall complete form C-103 and submit it to the division for approval.

(1) In addition to all other information required for C-103 submittal, the form shall specifically state that the applicant will place regulated NORM in the well bore. The abandonment procedure contained in the application shall identify depths at which the operator will place regulated NORM, radiation survey results conducted on the regulated NORM to be disposed, the procedure the operator will use to place the regulated NORM in the well bore and the specific form of regulated NORM the operator will place in the well bore (*e.g.* scale, pipe, dirt, etc.).

(2) The applicant shall address abnormally pressured zones in the well bore that might result in migration of the regulated NORM after it has been placed in the plugged and abandoned well in the application.

(3) The applicant shall send notice of the submittal of an application to dispose of regulated NORM in a plugged and abandoned well to the surface owner and the mineral lessor. The director may require additional notification as described in 19.15.35.14 NMAC.

C. The operator shall not commence work until the division has approved the application for regulated NORM disposal in a plugged and abandoned well.

D. The operator shall comply with the following requirements when disposing of the regulated NORM in a plugged and abandoned well.

(1) The operator shall follow plugging and abandonment procedures the division routinely requires unless the procedures are specifically superseded at the division's instruction to facilitate the regulated NORM disposal.

(2) The operator shall color-dye the cement plug located directly above the regulated NORM and the surface plug with red iron oxide.

(3) The operator shall dispose of regulated NORM at a depth of at least 100 feet below the lower most known underground source of drinking water zone. There must be evidence that there is cement across the known underground source of drinking water zones.

[19.15.35.12 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

19.15.35.13 INJECTION:

A. The division shall consider an operator's proposal for injecting regulated NORM into injection wells provided the operator will perform the injection in a manner that protects the environment, public health and fresh waters and complies with division rules pertaining to injection. Division approval is contingent on the applicant meeting the requirements in Subsection B of 19.15.35.13 NMAC at a minimum.

B. An applicant wishing to dispose of regulated NORM in a disposal well shall comply with the following requirements.

(1) An application submitted to the division for permission to dispose of a regulated NORM in an existing or newly permitted disposal well shall contain the following information at a minimum:

(a) a completed form C-108 with proof of required notification and a statement that regulated NORM will be injected;

(b) a description of regulated NORM to be disposed including its source, radiation levels and quantity; and

(c) a description of the process used on the material to improve injectivity.

(2) An operator shall comply with the following requirements when disposing of regulated NORM in a disposal well.

(a) The operator may only inject

regulated NORM from the operator's operations.

(b) Each time the operator injects regulated NORM into the disposal well, the operator shall submit a form C-103 to the division and the appropriate division district office. The operator shall submit the completed form C-103 five working days following the injection, which contains the following information: source of regulated NORM, NORM radiation level, quantity of material injected, description of any process the operator used on the material to improve injectivity, the injection pressure while injecting and dates of injection.

(c) The operator shall report mechanical failures to the appropriate division district office within 24 hours of the failure. The operator shall submit a description of the failure and immediate measures the operator took in response to the failure no later than 15 days following the failure. The operator shall notify the appropriate division district office of proposed repair plans. The operator shall receive division approval of repair plans prior to commencing work and provide notice of commencement to the appropriate division district office so that the division may witness or inspect repairs. The operator shall monitor well repairs to ensure regulated NORM does not escape the well bore or is completely contained in the repair operations.

(d) At the time of the disposal well's abandonment, the operator shall squeeze the injection interval that the operator used for regulated NORM injection with cement or locate a cement plug directly above the injection interval. Cement in either case shall contain red iron oxide.

(e) The injection zone shall be at a depth of at least 100 feet below the lower most known underground drinking water zone.

C. Injection in EOR injection wells. The division shall consider issuing a permit for the disposal of regulated NORM into injection wells within an approved EOR project only after notice and hearing and upon the applicant's minimum demonstration that:

(1) the injection will not reduce the project's efficiency or otherwise cause a reduction in the ultimate recovery of hydrocarbons from the project;

(2) the injection will not cause an increase in the radiation level of regulated NORM produced from the EOR interval in an producing well located either within or offsetting the project area; and

(3) the operations will conform to provisions of Subsection B of 19.15.35.13 NMAC.

D. Injection above fracture pressure.

(1) The division shall consider issuing a permit for the disposal of regulated NORM in a disposal well above fracture pressure only after notice and hearing and upon receiving the following minimum information from the applicant:

(a) a completed form C-108 clearly stating that disposal of regulated NORM at or above fracture pressure is proposed;

(b) information required under Subsection B of 19.15.35.13 NMAC above;

(c) model results predicting the fracture propagation including the expected height, extension, direction and any other evidence sufficient to demonstrate that the fracture will not extend beyond the injection interval or into the confining zones; the application shall include the procedure, the anticipated pressures and the type and pressure rating of equipment that the operator will use; the division may consider the current or potential utilization of zones immediately above and below the zone of interest in the acceptance or rejection of model predictions; and

(d) a contingency plan of the procedures, including containment plans that the operator will employ if a mechanical failure occurs.

(2) The operator shall comply with the following requirements when disposing of regulated NORM in a disposal well above fracture pressure.

(a) The operator shall notify the appropriate division district office 24 hours prior to commencing injection.

(b) Upon completion of the injection, the operator shall squeeze the disposal interval with cement or locate a cement plug directly above the injection interval. In either case the cement in either case shall contain red iron oxide. The operator shall submit a completed form C-103 to the division and the appropriate division district office within five working days of the injection. If the operator desires to return the well to injection below fracture pressure, the operator shall include those plans in the application.

E. Injection in commercial disposal facilities. The division shall consider issuing a permit for the commercial disposal of regulated NORM by injection only after notice and hearing, and provided the applicant has obtained a specific license pursuant to 20.3.14 NMAC and pursuant to 20.3.13 NMAC. In addition to obtaining these licenses the operator shall also comply with Subparagraph (a) of Paragraph 2 of Subsection B of 19.15.35.13 NMAC.

[19.15.35.13 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

19.15.35.14 ADDITIONAL NOTIFICATION:

A. The director may require additional notice for an application under 19.15.35.9 NMAC to 19.15.35.13 NMAC.

B. A notified party seeking to comment or request a public hearing on an application shall file comments or a written hearing request with the division within 20 days after receiving notice. A request for a hearing shall set forth the reasons why the division should hold a hearing.

C. The division shall hold a public hearing as required in 19.15.35.9 NMAC through 19.15.35.13 NMAC or if the director determines there is sufficient cause to hold a public hearing.

[19.15.35.14 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

HISTORY of 19.15.35 NMAC:

History of Repealed Material: 19.15.9 NMAC, Secondary or Other Enhanced Recovery, Pressure Maintenance, Salt Water Disposal, and Underground Storage (filed 11/13/2000) repealed 12/1/08.

NMAC History:

Those applicable portions of 19.15.9 NMAC, Secondary or Other Enhanced Recovery, Pressure Maintenance, Salt Water Disposal, and Underground Storage (Sections 712 and 714) (filed 11/13/2000) were replaced by 19.15.35 NMAC, Waste Disposal, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 37 REFINING

19.15.37.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.37.1 NMAC - Rp, 19.15.12.1 NMAC, 12/1/08]

19.15.37.2 SCOPE: 19.15.37 NMAC applies to persons engaged in refining oil; operating gasoline, cycling or other plants where gasoline, butane, propane, condensate, kerosene, oil or other liquid products are extracted from gas; or processing carbon dioxide gas into liquid or solid form within New Mexico.

[19.15.37.2 NMAC - Rp, 19.15.12.2 NMAC, 12/1/08]

19.15.37.3 STATUTORY AUTHORITY: 19.15.37 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and

Section 70-2-12.
[19.15.37.3 NMAC - Rp, 19.15.12.3 NMAC, 12/1/08]

19.15.37.4 DURATION: Permanent.
[19.15.37.4 NMAC - Rp, 19.15.12.4 NMAC, 12/1/08]

19.15.37.5 EFFECTIVE DATE: December 1, 2008, unless a later dated is cited at the end of a section.
[19.15.37.5 NMAC - Rp, 19.15.12.5 NMAC, 12/1/08]

19.15.37.6 OBJECTIVE: To regulate the refining of oil; the operation of gasoline, cycling or other plants where gasoline, butane, propane, condensate, kerosene, oil or other liquid products are extracted from gas; or the processing of carbon dioxide gas.
[19.15.37.6 NMAC - Rp, 19.15.12.6 NMAC, 12/1/08]

19.15.37.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]
[19.15.37.7 NMAC - N, 12/1/08]

19.15.37.8 REFINERY REPORTS: Each oil refiner shall furnish to the division for each calendar month a completed form C-113 containing the information and data the form requires, respecting oil and products involved in the refiner's operations during each month. The oil refiner shall complete and file the form C-113 with the division for each month according to instructions on the form, on or before the 15th day of the next succeeding month.
[19.15.37.8 NMAC - Rp, 19.15.12.1001 NMAC, 12/1/08]

19.15.37.9 GASOLINE PLANT REPORTS: An operator of a gasoline plant, cycling plant or other plant at which gasoline, butane, propane, condensate, kerosene, oil or other liquid products are extracted from gas shall maintain for the division's inspection for each calendar month a completed form C-111 containing the information indicated on the form respecting gas and products involved in each plant's operation during each month. 19.15.37.9 NMAC also applies to plants processing carbon dioxide gas into liquid or solid form.
[19.15.37.9 NMAC - Rp, 19.15.12.1002 NMAC, 12/1/08]

HISTORY of 19.15.37 NMAC:

History of Repealed Material: 19.15.12 NMAC, Refining (filed 10/01/2003) repealed 12/1/08.

NMAC History:
19.15.12 NMAC, Refining (filed 10/01/2003) was replaced by 19.15.37 NMAC, Refining, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS
PART 39 SPECIAL RULES

19.15.39.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division.
[19.15.39.1 NMAC - N, 12/1/08]

19.15.39.2 SCOPE: 19.15.39 NMAC applies to persons engaged in oil and gas development and production within New Mexico.
[19.15.39.2 NMAC - N, 12/1/08]

19.15.39.3 STATUTORY AUTHORITY: 19.15.39 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.
[19.15.39.3 NMAC - N, 12/1/08]

19.15.39.4 DURATION: Permanent.
[19.15.39.4 NMAC - N, 12/1/08]

19.15.39.5 EFFECTIVE DATE: December 1, 2008, unless a later date is cited at the end of a section.
[19.15.39.5 NMAC - N, 12/1/08]

19.15.39.6 OBJECTIVE: To regulate oil and gas operations in areas of particular environmental sensitivity in order to provide appropriate protection for fresh water, public health and the environment in those areas.
[19.15.39.6 NMAC - N, 12/1/08]

19.15.39.7 DEFINITIONS: [RESERVED]
[See 19.15.2.7 NMAC for definitions.]
[19.15.39.7 NMAC - N, 12/1/08]

19.15.39.8 SPECIAL PROVISIONS FOR SELECTED AREAS OF SIERRA AND OTERO COUNTIES:

A. The selected areas comprise:

(1) all of Sierra county except the area west of range 8 west NMPM and north of township 18 south, NMPM; and

(2) all of Otero county except the area included in the following townships and ranges:

(a) township 11 south, range 9 1/2 east and range 10 east NMPM;

(b) township 12 south, range 10 east and ranges 13 east through 16 east, NMPM;

(c) township 13 south, ranges 11 east through 16 east, NMPM;

(d) township 14 south, ranges 11 east through 16 east, NMPM;

(e) township 15 south, ranges 11 east through 16 east, NMPM;

(f) township 16 south, ranges 11 east through 15 east, NMPM;

(g) township 17 south, range 11 east (surveyed) and ranges 12 east through 15 east, NMPM;

(h) township 18 south, ranges 11 east through 15 east, NMPM;

(i) township 20 1/2 south, range 20 east, NMPM;

(j) township 21 south, range 19 east and range 20 east, NMPM; and

(k) township 22 south, range 20 east, NMPM; and also excepting also the un-surveyed area bounded as follows:

(i) beginning at the most northerly northeast corner of Otero county, said point lying in the west line of range 13 east (surveyed);

(ii) thence west along the north boundary line of Otero county to the point of intersection of such line with the east line of range 10 east NMPM (surveyed);

(iii) thence south along the east line of range 10 east NMPM (surveyed) to the southeast corner of township 11 south, range 10 east NMPM (surveyed);

(iv) thence west along the south line of township 11 south, range 10 east NMPM (surveyed) to the more southerly northeast corner of township 12 south, range 10 east NMPM (surveyed);

(v) thence south along the east line of range 10 east NMPM (surveyed) to the inward corner of township 13 south, range 10 east NMPM (surveyed) (said inward corner formed by the east line running south from the more northerly northeast corner and the north line running west from the more southerly northeast corner of said township and range);

(vi) thence east along the north line of township 13 south NMPM (surveyed) to the southwest corner of township 12 south, range 13 east, NMPM (surveyed);

(vii) thence north along the west line of range 13 east, NMPM (surveyed) to the point of beginning.

B. The division shall not issue permits under 19.15.17 NMAC for

pits located in the selected areas.

C. Produced water injection wells located in the selected areas are subject to the following requirements in addition to those set out in 19.15.25 NMAC and 19.15.34 NMAC.

(1) The division shall issue permits under 19.15.26.8 NMAC only after notice and hearing.

(2) The radius of the area of review shall be the greater of:

(a) one-half mile; or

(b) one and one-third times the radius of the zone of endangering influence, as calculated under EPA regulation 40 C.F.R. section 146.6(a) or by other method acceptable to the division; but in no case shall the radius of the area of review exceed one and one-third miles.

(3) The operator shall demonstrate fresh water aquifers' vertical extent prior to using a new or existing well for injection.

(4) The operator shall isolate fresh water aquifers throughout their vertical extent with at least two cemented casing strings. In addition,

(a) existing wells converted to injection shall have continuous, adequate cement from casing shoe to surface on the smallest diameter casing, and

(b) wells drilled for the purpose of injection shall have cement circulated continuously to surface on all casing strings, except the smallest diameter casing shall have cement to at least 100 feet above the casing shoe of the next larger diameter casing.

(5) The operator shall run cement bond logs acceptable to the division after each casing string is cemented, and file the logs with the appropriate division district office. For existing wells the casing and cementing program shall comply with 19.15.26.9 NMAC.

(6) The operator shall construct produced water transportation lines of corrosion-resistant materials acceptable to the division, and pressure test the water transportation lines to one and one-half times the maximum operating pressure prior to operation, and annually thereafter.

(7) The operator shall place tanks on impermeable pads and surround the tanks with lined berms or other impermeable secondary containment device having a capacity at least equal to one and one-third times the capacity of the largest tank, or, if the tanks are interconnected, of all interconnected tanks.

(8) The operator shall record injection pressures and volumes daily or in a manner acceptable to the division, and make the record available to the division upon request.

(9) The operator shall perform mechanical integrity tests as described in Paragraph (2) of Subsection A of 19.15.26.11 NMAC annually, shall advise the appropriate division district office of the date and time the operator is commencing a mechanical integrity test so that the division may witness the test and shall file the pressure chart with the appropriate division district office.

[19.15.39.8 NMAC - Rp, 19.15.1.21 NMAC, 12/1/08]

HISTORY of 19.15.39 NMAC:

History of Repealed Material: 19.15.1 NMAC, General Provisions and Definitions (filed 04/27/2001) repealed 12/1/08 repealed 12/1/08.

NMAC History:

That applicable portion of 19.15.1 NMAC, General Provisions and Definitions (Section 21) (filed 07/22/2004) was replaced by 19.15.39 NMAC, Special Rules, effective 12/1/08.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

This is an amendment to 19.15.17 NMAC, Sections 7, 11, 13, and 15, effective 12/1/08.

19.15.17.7 DEFINITIONS:

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

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

C. "Division-approved facility" means a division-permitted surface waste management or injection facility, a facility permitted pursuant to 20.6.2 NMAC, a facility approved pursuant to [~~19.15.9.712 NMAC~~] 19.15.35.8 NMAC or other facility that the division specifically approves for the particular purpose. The division shall not approve any facility not otherwise permitted unless it finds that the facility's use for the specified purpose will protect fresh water, public health and the environment and comply with other applicable federal or state statutes, federal regulations, state rules and local ordinances.

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

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

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

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

H. "Sump" means an impermeable vessel, or a collection device incorporated within a secondary containment system, with a capacity less than 500 gallons, which remains predominantly empty, serves as a drain or receptacle for de minimis releases on an intermittent basis and is not used to store, treat, dispose of or evaporate products or wastes.

I. "Temporary pit" means a pit, including a drilling or workover pit, which is constructed with the intent that the pit will hold liquids for less than six months and will be closed in less than one year.

[19.15.17.7 NMAC - N, 6/16/08; A, 12/1/08]

19.15.17.11 DESIGN AND CONSTRUCTION SPECIFICATIONS:

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

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

C. Signs. The operator shall post an upright sign not less than 12 inches by 24 inches with lettering not less than two inches in height in a conspicuous place on the fence surrounding the pit, closed-loop system or below-grade tank, unless the pit, closed-loop system or below-grade tank is located on a site where there is an existing well, signed in compliance with [~~19.15.3.103 NMAC~~] 19.15.16.8 NMAC, that is operated by the same operator. The operator shall post the sign in a manner and location such that a person can easily read the legend. The sign shall provide the following information: the operator's name; the location of the site by quarter-quarter or unit letter, section, township and range; and emergency telephone numbers.

D. Fencing.

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

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

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

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

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

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

(2) A temporary pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. The operator shall construct a temporary pit so that the slopes are no steeper than two horizontal feet to one vertical foot (2H:1V). The appropriate division district office may approve an alternative to the slope requirement if the operator demonstrates that it can construct and operate the temporary pit in a safe manner to prevent contamination of fresh water and protect public health and the environment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The operator shall minimize liner seams and orient them up and down,

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

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

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

(8) The operator shall notify the environmental bureau in the division's Santa Fe office at least 72 hours prior to the primary liner's installation so that a representative of the environmental bureau in the division's Santa Fe office may inspect the leak detection system before it is covered.

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

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

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

H. Closed-loop systems.

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

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

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

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

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

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

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

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

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

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

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

(a) An operator may construct and use a below-grade tank that does not have double walls provided that the below-grade tank's side walls are open for visual inspection for leaks, the below-grade tank's bottom is elevated a minimum of six inches above the underlying ground surface and the below-grade tank is underlain with a geomembrane liner, which may be covered with gravel, to divert leaked liquid to a location that can be visually inspected. The operator shall equip below-grade tanks designed in this manner with a properly operating automatic high-level shut-off control device and manual controls to prevent overflows. The geomembrane liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material that the appropriate division district office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1 x 10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.

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

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

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

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

J. On-site trenches for

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

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

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

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

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

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

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

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

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

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

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

[19.15.17.11 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08; A, 12/1/08]

19.15.17.13 CLOSURE REQUIREMENTS:

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

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

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

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

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

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

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

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

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

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

(1) Waste excavation and removal.

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

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

(i) For temporary pits where ground water is between 50 and 100 feet below the bottom of the temporary pit or for cavitation pits allowed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 19.15.17.10 NMAC, the operator shall collect, at a minimum, a five point, composite sample; collect individual grab samples from any area that is wet, discolored or showing other evidence of a release; and analyze for benzene, total BTEX, TPH, the GRO and DRO combined fraction and chlorides to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B or other EPA method that the division approves, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B or other EPA method that the division approves, does not exceed 50 mg/kg;

TPH, as determined by EPA SW-846 method 418.1 or other EPA method that the division approves, does not exceed 2500 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 500 mg/kg or the background concentration, whichever is greater. The operator shall notify the division of its results on form C-141. The division may require additional delineation upon review of the results.

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

(c) If the operator or the division determines that a release has occurred, then the operator shall comply with [~~19.15.3.116 NMAC and 19.15.1.19 NMAC~~] 19.15.29 NMAC and 19.15.30 NMAC, as appropriate.

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

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

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

C. Closure method for permanent pits.

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

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

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

(4) If the operator or the division determines that a release has occurred, then the operator shall comply with [~~19.15.3.116 NMAC and 19.15.1.19 NMAC~~] 19.15.29 NMAC and 19.15.30 NMAC, as appropriate.

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

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

(1) Waste removal.

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

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

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

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

E. Closure method for below-grade tanks.

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

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

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

(4) The operator shall test the soils beneath the below-grade tank to determine whether a release has occurred. The operator shall collect, at a minimum, a five

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

(5) If the operator or the division determines that a release has occurred, then the operator shall comply with [~~19.15.3.116 NMAC and 19.15.1.19 NMAC~~] 19.15.29 NMAC and 19.15.30 NMAC, as appropriate.

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

F. On-site closure methods. The following closure requirements and standards apply if the operator proposes a closure method for a drying pad associated with a closed-loop system or a temporary pit pursuant to Paragraph (2) of Subsection D of 19.15.17.13 NMAC or Paragraph (2) of Subsection B of 19.15.17.13 NMAC that involves on-site burial, or an alternative closure method pursuant to Paragraph (3) of Subsection D of 19.15.17.13 NMAC or Paragraph (3) of Subsection B of 19.15.17.13 NMAC and Subsection B of 19.15.17.15 NMAC.

(1) General requirements.

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

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

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

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

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

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

(2) In-place burial.

(a) Where the operator meets the siting criteria specified in Paragraphs (2) or (3) of Subsection C of 19.15.17.10 NMAC and the applicable waste criteria specified in Subparagraphs (c) or (d) of Paragraph (2) of Subsection F of 19.15.17.13 NMAC, an operator may use in-place burial (burial in the existing temporary pit) for closure of a temporary pit or bury the contents of a drying pad associated with a closed-loop system in a temporary pit that the operator constructs in accordance with Paragraphs (1) through (6) and (10) of Subsection F of 19.15.17.11 NMAC for closure of a drying pad associated with a closed loop system.

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

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

(d) Where the ground water will be more than 100 feet below the bottom of the buried waste, the operator shall collect at a minimum, a five point, composite sample of the contents of the drying pad associated with a closed-loop system or the contents of a temporary pit after treatment or stabilization, if treatment or stabilization is required, to demonstrate that benzene, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 0.2 mg/kg; total BTEX, as determined by EPA SW-846 method 8021B or 8260B, does not exceed 50 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, does not exceed 500 mg/kg; TPH, as determined by EPA method 418.1 or other EPA method that the division approves, does not exceed 2500 mg/kg; and chlorides, as determined by EPA method 300.1, do not exceed 1000 mg/kg or the background concentration, whichever is greater. The operator may collect the composite sample prior to treatment or stabilization to demonstrate that the contents do not exceed these concentrations. However, if the contents collected prior to treatment or stabilization exceed the specified concentrations the operator shall collect a second

five point, composite sample of the contents after treatment or stabilization to demonstrate that the contents do not exceed these concentrations.

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

(f) For burial of the contents from a drying pad associated with a closed-loop system, the operator shall construct a temporary pit, in accordance with Paragraphs (1) through (6) and (10) of Subsection F of [~~19.15.17.10~~] 19.15.17.11 NMAC, within 100 feet of the drying pad associated with a closed-loop system, unless the appropriate division district office approves an alternative distance and location. The operator shall use a separate temporary pit for closure of each drying pad associated with a closed-loop system.

(3) On-site trench burial.

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

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

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

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

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

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

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

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

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

(h) If the operator or the division determines that a release has occurred, then the operator shall comply with [~~19.15.3.116 NMAC and 19.15.1.19 NMAC~~] 19.15.29 NMAC and 19.15.30 NMAC, as appropriate. The operator may propose to transfer the excavated, contaminated soil into the lined trench.

(i) The operator shall install a geomembrane cover over the excavated material in the lined trench. The operator shall design and construct the geomembrane cover in accordance with the require-

ments specified in Paragraphs (9) and (10) of Subsection J of 19.15.17.11 NMAC.

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

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

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

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

H. Soil cover designs.

(1) The soil cover for closures where the operator has removed the pit contents or remediated the contaminated soil to the division's satisfaction shall consist of the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

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

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

I. Re-vegetation.

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

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

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

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

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

J. Closure notice.

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

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

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

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

[19.15.17.13 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08; A, 12/1/08]

19.15.17.15 EXCEPTIONS:

A. General exceptions.

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

health or the environment.

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

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

(4) The environmental bureau in the division's Santa Fe office may grant the exception administratively if the environmental bureau in the division's Santa Fe office receives no comments or requests for hearing within the time for commenting established in Paragraph (3) of Subsection A of 19.15.17.15 NMAC. If the environmental bureau in the division's Santa Fe office receives a request for hearing and the director determines that the request presents issues that have technical merit or that there is significant public interest then the director may set the application for hearing. The director, however, may set any application for hearing. If the environmental bureau in the division's Santa Fe office schedules a hearing on an application, the hearing shall be conducted according to the procedures in [~~19.15.14.1206 through 19.15.14.1215 NMAC~~] 19.15.4 NMAC.

(5) If the director does not determine that a hearing is necessary due to technical merit, significant public interest or otherwise then the environmental bureau in the division's Santa Fe office may grant the exception without a hearing notwithstanding the filing of a request for hearing. If, however, the environmental bureau in the division's Santa Fe office determines to deny the exception, then it shall notify the operator of its determination by certified mail, return receipt requested, and if the operator requests a hearing within 10 days after receipt of such notice shall set the matter for hearing, with notice to the operator and to any party who has filed a comment or requested a hearing.

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

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

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

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

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

[19.15.17.15 NMAC - Rn, 19.15.2.50 NMAC & A, 6/16/08; A, 12/1/08]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

This is an amendment to 19.15.36 NMAC, Sections 1 through 3, 5, 7, 8, 10, 12 through 16, and 18, effective 12/1/08.

19.15.36.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Oil Conservation Division[~~, 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505~~].

[19.15.36.1 NMAC - N, 2/14/2007; A, 12/1/08]

19.15.36.2 SCOPE: [~~This part~~] 19.15.36 NMAC applies to persons or entities that own or operate surface waste management facilities as defined in Subsection S of 19.15.1.7 NMAC.

[19.15.36.2 NMAC - N, 2/14/2007; A, 12/1/08]

19.15.36.3 STATUTORY AUTHORITY: [~~This part~~] 19.15.36 NMAC is adopted pursuant to the Oil and Gas Act, [~~Sections 70-2-1 through 70-2-38 NMSA 1978~~] NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12, which grants the [~~oil conservation~~] division jurisdiction and authority over the disposition of wastes resulting from oil and gas operations.

[19.15.36.3 NMAC - N, 2/14/2007; A, 12/1/08]

19.15.36.5 EFFECTIVE DATE: [~~2/14/2007~~] February 14, 2007, unless a later date is cited at the end of a section.

[19.15.36.5 NMAC - N, 2/14/2007; A, 12/1/08]

19.15.36.7 DEFINITIONS:

A. Definitions relating to types of surface waste management facilities.

(1) "Centralized facility" [~~is~~] means a surface waste management facility:

(a) that is used exclusively by one generator subject to New Mexico's Oil and Gas Conservation Tax Act, NMSA 1978, Section 7-30-1, as amended;

(b) where the generator or operator does not receive compensation for oil field waste management at that facility; and

(c) receives exclusively oil field wastes that are generated from production units or leases the generator, or an affiliate of the generator, operates (for this provision's purposes, an affiliate of a generator is a person who controls, is controlled by or is under common control with the generator).

(2) "Commercial facility" [~~is~~]

means a surface waste management facility that is not a centralized facility.

(3) "Landfarm" [~~is~~] means a discrete area of land designated and used for the remediation of petroleum hydrocarbon-contaminated soils and drill cuttings.

(4) "Landfill" [~~is~~] means a discrete area of land or an excavation designed for permanent disposal of exempt or non-hazardous waste.

(5) "Small landfarm" [~~is~~] means a centralized landfarm of two acres or less that has a total capacity of 2000 cubic yards or less in a single lift of eight inches or less, remains active for a maximum of three years from the date of its registration and that receives only petroleum hydrocarbon-contaminated soils (excluding drill cuttings) that are exempt or non-hazardous waste.

B. Other definitions.

(1) "Active portion" [~~is~~] means that part of a surface waste management facility that has received or is receiving oil field waste and has not been closed.

(2) "Cell" [~~is~~] means a confined area engineered for the disposal or treatment of oil field waste.

(3) "Composite liner"[~~is~~] means a liner that may consist of multiple layers of geosynthetics and low-permeability soils. The different layers of a composite liner may have different material properties and may be applied at different stages of landfill liner installation.

(4) "Geosynthetic" [~~is~~] means the general classification of synthetic materials used in geotechnical applications, including the following classifications:

(a) "geocomposite"[~~is~~] means a manufactured material using geotextiles, geogrids or geomembranes, or combinations thereof, in a laminated or composite form;

(b) "geogrid" [~~is~~] means a deformed or non-deformed, netlike polymeric material used to provide reinforcement to soil slopes;

(c) "geomembrane"[~~is~~] means an impermeable polymeric sheet material that is impervious to liquid and gas as long as it maintains its integrity, and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system;

(d) "geonet" [~~is~~] means a type of geogrid that allows planar flow of liquids and serves as a drainage system;

(e) "geosynthetic clay liner (GCL)" [~~is~~] means a relatively thin layer of processed clay (typically bentonite) that is either bonded to a geomembrane or fixed between two sheets of geotextile; and

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

(5) "Leachate" [~~is~~] means the liquid that has passed through or emerged from oil field waste and contains soluble, suspended or miscible materials.

(6) "Landfarm cell" [~~is~~] means a bermed area of 10 acres or less within a landfarm.

(7) "Landfarm lift" [~~is~~] means an accumulation of soil or drill cuttings predominately contaminated by petroleum hydrocarbons that is placed into a landfarm cell for treatment.

[~~**(8)** "Liner" is a continuous, low-permeability layer constructed of natural or human-made materials that restricts the migration of liquid oil field wastes, gases or leachate.~~]

[~~**(9)**~~]**(8)** "Lower explosive limit" [~~is~~] means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 77 degrees fahrenheit and atmospheric pressure.

[~~**(10)**~~]**(9)** "Major modification" [~~is~~] means a modification of a surface waste management facility that involves an increase in the land area that the permitted surface waste management facility occupies; a change in the design capacity or nature of the permitted oil field waste stream; addition of a new treatment process; an exception to, waiver of or change to a numerical standard provided in 19.15.36 NMAC; or other modification that the division determines is sufficiently substantial that public notice and public participation in the application process are appropriate.

[~~**(11)**~~]**(10)** "Minor modification" [~~is~~] means a modification of a surface waste management facility that is not a major modification.

[~~**(12)**~~]**(11)** "Operator" means the operator of a surface waste management facility.

[~~**(13)**~~]**(12)** "Poor foundation conditions" are features that indicate that a natural or human-induced event may result in inadequate foundational support for a surface waste management facility's structural components.

[~~**(14)**~~]**(13)** "Run-off" [~~is~~] means rainwater, leachate or other liquid that drains over land from any part of a surface waste management facility.

[~~**(15)** "Run-on" is rainwater, leachate or other liquid that drains from other land on to any part of a surface waste management facility.~~]

[~~**(16)**~~]**(14)** "Structural components of a landfill" are liners, leachate collection and removal systems, final covers, run-on/run-off systems and other components used in a landfill's construction or operation that are necessary for protection of fresh water, public health, safety or the environment.

[~~**(17)** Unstable area is a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of a landfill's structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and Karst terrain areas where Karst topography is developed as a result of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of Karst terrain include sinkholes, sinking streams, caves, large springs and blind valleys.~~]

[19.15.36.7 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08]

19.15.36.8 SURFACE WASTE MANAGEMENT FACILITY PERMITS AND APPLICATION REQUIREMENTS:

A. Permit required. No person shall operate a surface waste management facility (other than a small landfarm registered pursuant to Paragraph (1) of Subsection A of 19.15.36.16 NMAC) except pursuant to and in accordance with the terms and conditions of a division-issued surface waste management facility permit.

B. Permitting requirements. Except for small landfarms registered pursuant to Paragraph (1) of Subsection A of 19.15.36.16 NMAC, new commercial or centralized facilities prior to commencement of construction, and existing commercial or centralized facilities prior to modification or permit renewal, shall be permitted by the division in accordance with the applicable requirements of Subsection C of 19.15.36.8 NMAC and 19.15.36.11 NMAC.

C. Application requirements for new facilities, major modifications and permit renewals. An applicant or operator shall file an application, form C-137, for a permit for a new surface waste management facility, to modify an existing surface waste management facility or for permit renewal with the environmental bureau in the division's Santa Fe office. The application shall include:

(1) the names and addresses of the applicant and principal officers and owners of 25 percent or more of the applicant;

(2) a plat and topographic map showing the surface waste management facility's location in relation to governmental surveys (quarter-quarter section, township and range); highways or roads giving access to the surface waste management

facility site; watercourses; fresh water sources, including wells and springs; and inhabited buildings within one mile of the site's perimeter;

(3) the names and addresses of the surface owners of the real property on which the surface waste management facility is sited and surface owners of the real property within one mile of the site's perimeter;

(4) a description of the surface waste management facility with a diagram indicating the location of fences and cattle guards, and detailed construction/installation diagrams of pits, liners, dikes, piping, sprayers, tanks, roads, fences, gates, berms, pipelines crossing the surface waste management facility, buildings and chemical storage areas;

(5) engineering designs, certified by a registered professional engineer, including technical data on the design elements of each applicable treatment, remediation and disposal method and detailed designs of surface impoundments;

(6) a plan for management of approved oil field wastes that complies with the applicable requirements contained in [~~19.15.36.13, 19.15.36.14, 19.15.36.15 and 19.15.36.17 NMAC~~] 19.15.36.13 NMAC, 1915.36.14 NMAC, 19.15.36.15 NMAC and 19.15.36.17 NMAC;

(7) an inspection and maintenance plan that complies with the requirements contained in Subsection L of 19.15.36.13 NMAC;

(8) a hydrogen sulfide prevention and contingency plan that complies with those provisions of [~~19.15.3.118 NMAC~~] 19.15.11 NMAC that apply to surface waste management facilities;

(9) a closure and post closure plan, including a responsible third party contractor's cost estimate, sufficient to close the surface waste management facility in a manner that will protect fresh water, public health, safety and the environment (the closure and post closure plan shall comply with the requirements contained in Subsection D of 19.15.36.18 NMAC);

(10) a contingency plan that complies with the requirements of Subsection N of 19.15.36.13 NMAC and with NMSA 1978, Sections 12-12-1 through 12-12-30, as amended [~~(the Emergency Management Act)~~];

(11) a plan to control run-on water onto the site and run-off water from the site that complies with the requirements of Subsection M of 19.15.36.13 NMAC;

(12) in the case of an application to permit a new or expanded landfill, a leachate management plan that describes the anticipated amount of leachate that will be generated and the leachate's handling, storage, treatment and disposal, including final post closure options;

(13) in the case of an application to permit a new or expanded landfill, a gas safety management plan that complies with the requirements of Subsection O of 19.15.36.13 NMAC;

(14) a best management practice plan to ensure protection of fresh water, public health, safety and the environment;

(15) geological/hydrological data including:

(a) a map showing names and location of streams, springs or other watercourses, and water wells within one mile of the site;

(b) laboratory analyses, performed by an independent commercial laboratory, for major cations and anions; [~~benzene, toluene, ethyl benzene and xylenes (BTEX)~~] BTEX; RCRA metals; and [~~total dissolved solids (TDS)~~] TDS of ground water samples of the shallowest fresh water aquifer beneath the proposed site;

(c) depth to, formation name, type and thickness of the shallowest fresh water aquifer;

(d) soil types beneath the proposed surface waste management facility, including a lithologic description of soil and rock members from ground surface down to the top of the shallowest fresh water aquifer;

(e) geologic cross-sections;

(f) potentiometric maps for the shallowest fresh water aquifer; and

(g) porosity, permeability, conductivity, compaction ratios and swelling characteristics for the sediments on which the contaminated soils will be placed;

(16) certification by the applicant that information submitted in the application is true, accurate and complete to the best of the applicant's knowledge, after reasonable inquiry; and

(17) other information that the division may require to demonstrate that the surface waste management facility's operation will not adversely impact fresh water, public health, safety or the environment and that the surface waste management facility will comply with division rules and orders.

D. Application requirements for minor modifications. An existing surface waste management facility applying for a minor modification shall file a form C-137 with the environmental bureau in the division's Santa Fe office describing the proposed change and identifying information that has changed from its last C-137 filing.

E. Determination that an application is administratively complete. Upon receipt of an application for a surface waste management facility permit or modification or renewal of an existing surface waste management facility permit, the division shall review the application for administrative completeness. To be deemed administratively complete, the application shall provide information required by Subsection C or D (as applicable) of 19.15.36.8 NMAC. The division shall notify the applicant in writing when it deems the application administratively complete. If the division determines that the application is not administratively complete, the division shall notify the applicant of the deficiencies in writing within 30 days after the application's receipt and state what additional information is necessary.

[19.15.36.8 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08]

19.15.36.10 COMMENTS AND HEARING ON APPLICATION:

A. A person, whether or not such person has previously submitted comments, may file comments or request a hearing on the application by filing their comments or, in accordance with [~~19.15.14.1206 NMAC~~] 19.15.4.9 NMAC, a hearing request with the division clerk within 30 days after the date that the applicant issued public notice of the division's tentative decision. A request for a hearing shall be in writing and shall state specifically the reasons why a hearing should be held. The division shall schedule a public hearing on the application if, in addition to the requirements in [~~19.15.14.1206 NMAC~~] 19.15.4.9 NMAC:

(1) the division has proposed to deny the application or grant it subject to conditions not expressly required by rule, and the applicant requests a hearing;

(2) the director determines that there is significant public interest in the application;

(3) the director determines that comments have raised objections that have probable technical merit; or

(4) determination of the application requires that the division make a finding, pursuant to [~~Paragraph (3) of Subsection F of 19.15.1.7 NMAC~~] Paragraph (3) of Subsection F of 19.15.2.7 NMAC, whether a water source has a present or reasonably foreseeable beneficial use that contamination would impair.

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

[19.15.36.10 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08]

19.15.36.12 P E R M I T APPROVAL, DENIAL, REVOCATION, SUSPENSION, MODIFICATION OR TRANSFER:

A. Granting of permit.

(1) The division may issue a permit for an new surface waste management facility or major modification upon finding

that an acceptable application has been filed, that the conditions of 19.15.36.9 NMAC and 19.15.36.11 NMAC have been met and that the surface waste management facility or modification can be constructed and operated in compliance with applicable statutes and rules and without endangering fresh water, public health, safety or the environment.

(2) Each permit the division issues for a new surface waste management facility shall remain in effect for 10 years from the date of its issuance. If the division grants a permit for a major modification of a surface waste management facility, the permit for that surface waste management facility shall remain in effect for 10 years from the date the division approves the major modification.

(a) A surface waste management facility permit may be renewed for successive 10-year terms. If the holder of a surface waste management facility permit submits an application for permit renewal at least 120 days before the surface waste management facility permit expires, and the operator is not in violation of the surface waste management facility permit on the date of its expiration, then the existing surface waste management facility permit for the same activity shall not expire until the division has approved or denied an application for renewal. If the division has not notified the operator of a violation, if the operator is diligently pursuing procedures to contest a violation or if the operator and the division have signed an agreed compliance order providing for remedying the violation, then the surface waste management facility permit shall continue in effect as above provided notwithstanding the surface waste management facility permit violation's existence. A surface waste management facility permit continued under this provision remains fully effective and enforceable.

(b) An application for permit renewal shall include and adequately address the information necessary for evaluation of a new surface waste management facility permit as provided in Subsection C of 19.15.36.8 NMAC. Previously submitted materials may be included by reference provided they are current, readily available to the division and sufficiently identified so that the division may retrieve them.

(c) The operator shall give public notice of the renewal application in the manner prescribed by 19.15.36.9 NMAC. The division shall grant an application for renewal if the division finds that an acceptable application has been filed, that the conditions of 19.15.36.9 NMAC and 19.15.36.11 NMAC have been met and that the surface waste management facility can be operated in compliance with applicable statutes and rules and without endangering fresh water, public health, safety or the environment.

(3) The division shall review each surface waste management facility permit at least once during the 10-year term, and shall review surface waste management facility permits to which Paragraph (2) of Subsection A of 19.15.36.12 NMAC does not apply at least every five years. The review shall address the operation, compliance history, financial assurance and technical requirements for the surface waste management facility. The division, after notice to the operator and an opportunity for a hearing, may require appropriate modifications of the surface waste management facility permit, including modifications necessary to make the surface waste management facility permit terms and conditions consistent with statutes, rules or judicial decisions.

B. Denial of permit. The division may deny an application for a surface waste management facility permit or modification of a surface waste management facility permit if it finds that the proposed surface waste management facility or modification may be detrimental to fresh water, public health, safety or the environment. The division may also deny an application for a surface waste management facility permit if the applicant, an owner of 25 percent or greater interest in the applicant or an affiliate of the applicant has a history of failure to comply with division rules and orders or state or federal environmental laws; is subject to a division or commission order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty. An affiliate of an applicant, for purposes of Subsection B of 19.15.36.12 NMAC, shall be a person who controls, is controlled by or under is common control with the applicant or a 25 percent or greater owner of the applicant.

C. Additional requirements. The division may impose conditions or requirements, in addition to the operational requirements set forth in 19.15.36 NMAC, that it determines are necessary and proper for the protection of fresh water, public health, safety or the environment. The division shall incorporate such additional conditions or requirements into the surface waste management facility permit.

D. Revocation, suspension or modification of a permit. The division may revoke, suspend or impose additional operating conditions or limitations on a surface waste management facility permit at any time, for good cause, after notice to the operator and an opportunity for a hearing. The division may suspend a surface waste management facility permit or impose additional conditions or limitations in an emergency to forestall an imminent threat to fresh water, public health, safety or the environment, subject to the provisions of NMSA 1978, Section 70-2-23, as amended. If the division initiates a major modification it shall provide notice in accordance with 19.15.36.9 NMAC. Suspension of a surface waste management facility permit may be for a fixed period of time or until the operator remedies the violation or potential violation. If the division suspends a surface waste management facility's permit, the surface waste management facility shall not accept oil field waste during the suspension period.

E. Transfer of a permit. The operator shall not transfer a permit without the division's prior written approval. A request for transfer of a permit shall identify officers, directors and owners of 25 percent or greater in the transferee. Unless the director otherwise orders, public notice or hearing are not required for the transfer request's approval. If the division denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the proposed transferee may request a hearing with 10 days after receipt of the notice. Until the division approves the transfer and the required financial assurance is in place, the division shall not release the transferor's financial assurance.

[19.15.36.12 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08]

19.15.36.13 SITING AND OPERATIONAL REQUIREMENTS APPLICABLE TO ALL PERMITTED SURFACE WASTE MANAGEMENT FACILITIES: Except as otherwise provided in 19.15.36 NMAC.

A. Depth to ground water.

(1) No landfill shall be located where ground water is less than 100 feet below the lowest elevation of the design depth at which the operator will place oil field waste.

(2) No landfarm that accepts soil or drill cuttings with a chloride concentration that exceeds 500 mg/kg shall be located where ground water is less than 100 feet below the lowest elevation at which the operator will place oil field waste. See Subsection A of 19.15.36.15 NMAC for oil field waste acceptance criteria.

(3) No landfarm that accepts soil or drill cuttings with a chloride concentration that is 500 mg/kg or less shall be located where ground water is less than 50 feet below the lowest elevation at which the

operator will place oil field waste.

(4) No small landfarm shall be located where ground water is less than 50 feet below the lowest elevation at which the operator will place oil field waste.

(5) No other surface waste management facility shall be located where ground water is less than 50 feet below the lowest elevation at which the operator will place oil field waste.

B. No surface waste management facility shall be located:

(1) within 200 feet of a watercourse, lakebed, sinkhole or playa lake;

(2) within an existing wellhead protection area or 100-year floodplain;

(3) within, or within 500 feet of, a wetland;

(4) within the area overlying a subsurface mine;

(5) within 500 feet from the nearest permanent residence, school, hospital, institution or church in existence at the time of initial application; or

(6) within an unstable area, unless the operator demonstrates that engineering measures have been incorporated into the surface waste management facility design to ensure that the surface waste management facility's integrity will not be compromised.

C. No surface waste management facility shall exceed 500 acres.

D. The operator shall not accept oil field wastes transported by motor vehicle at the surface waste management facility unless the transporter has a form C-133, authorization to move liquid waste, approved by the division.

E. The operator shall not place oil field waste containing free liquids in a landfill or landfarm cell. [~~Operators~~] The operator shall use the paint filter test, as prescribed by the EPA (EPA SW-846, method 9095) to determine conformance of the oil field waste to this criterion.

F. Surface waste management facilities shall accept only exempt or non-hazardous waste, except as provided in Paragraph (3) of Subsection F of 19.15.36.13 NMAC. The operator shall not accept hazardous waste at a surface waste management facility. The operator shall not accept wastes containing [~~regulated naturally occurring radioactive material (NORM)~~] NORM at a surface waste management facility except as provided in [~~Subsection C of 19.15.9.714 NMAC~~] 19.15.35 NMAC. The operator shall require the following documentation for accepting oil field wastes, and both the operator and the generator shall maintain and make the documentation available for division inspection.

(1) Exempt oil field wastes. The operator shall require a certification on form C-138, signed by the generator or the generator's authorized agent, that represents and warrants that the oil field wastes are generated from oil and gas exploration and production operations, are exempt waste and are not mixed with non-exempt waste. The operator shall have the option to accept such certifications on a monthly, weekly or per load basis. The operator shall maintain and shall make the certificates available for the division's inspection.

(2) Non-exempt, non-hazardous, oil field wastes. The operator shall require a form C-138, oil field waste document, signed by the generator or its authorized agent. This form shall be accompanied by acceptable documentation to determine that the oil field waste is non-hazardous.

(3) Emergency non-oil field wastes. The operator may accept non-hazardous, non-oil field wastes in an emergency if ordered by the department of public safety. The operator shall complete a form C-138, oil field waste document, describing the waste, and maintain the same, accompanied by the department of public safety order, subject to division inspection.

G. The operator of a commercial facility shall maintain records reflecting the generator, the location of origin, the location of disposal within the commercial facility, the volume and type of oil field waste, the date of disposal and the hauling company for each load or category of oil field waste accepted at the commercial facility. The operator shall maintain such records for a period of not less than five years after the commercial facility's closure, subject to division inspection.

H. Disposal at a commercial facility shall occur only when an attendant is on duty unless loads can be monitored or otherwise isolated for inspection before disposal. The surface waste management facility shall be secured to prevent unauthorized disposal.

I. To protect migratory birds, tanks exceeding eight feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon the operator's written application, the division may grant an exception to screening, netting or covering upon the operator's showing that an alternative method will protect migratory birds or that the surface waste management facility is not hazardous to migratory birds. Surface waste management facilities shall be fenced in a manner approved by the division.

J. Surface waste management facilities shall have a sign, readable from a distance of 50 feet and containing the operator's name; surface waste management facility permit or order number; surface waste management facility location by unit letter, section, township and range; and emergency telephone numbers.

K. [~~Operators~~] The operators shall comply with the spill reporting and corrective action provisions of [~~19.15.1.19 or 19.15.3.116 NMAC~~] 19.15.30 NMAC or 19.15.29 NMAC.

L. Each operator shall have an inspection and maintenance plan that includes the following:

(1) monthly inspection of leak detection sumps including sampling if fluids are present with analyses of fluid samples furnished to the division; and maintenance of records of inspection dates, the inspector and the leak detection system's status;

(2) semi-annual inspection and sampling of monitoring wells as required, with analyses of ground water furnished to the division; and maintenance of records of inspection dates, the inspector and ground water monitoring wells' status; and

(3) inspections of the berms and the outside walls of pond levees quarterly and after a major rainfall or windstorm, and maintenance of berms in such a manner as to prevent erosion.

M. Each operator shall have a plan to control run-on water onto the site and run-off water from the site, such that:

(1) the run-on and run-off control system shall prevent flow onto the surface waste management facility's active portion during the peak discharge from a 25-year storm; and

(2) run-off from the surface waste management facility's active portion shall not be allowed to discharge a pollutant to the waters of the state or United States that violates state water quality standards.

N. Contingency plan. Each operator shall have a contingency plan. The operator shall provide the division's environmental bureau with a copy of an amendment to the contingency plan, including amendments required by Paragraph (8) of Subsection N of 19.15.36.13 NMAC; and promptly notify the division's environmental bureau of changes in the emergency coordinator or in the emergency coordinator's contact information. The contingency plan shall be designed to minimize hazards to fresh water, public health, safety or the environment from fires, explosions or an unplanned sudden or non-sudden release of contaminants or oil field waste to air, soil, surface water or ground water. The operator shall carry out the plan's provisions immediately whenever there is a fire, explosion or release of contaminants or oil field waste constituents that could threaten fresh water, public health, safety or the environment; provided that the emergency coordinator may deviate from the plan as necessary in an emergency situation. The contingency plan for emergencies shall:

(1) describe the actions surface

waste management facility personnel shall take in response to fires, explosions or releases to air, soil, surface water or ground water of contaminants or oil field waste containing constituents that could threaten fresh water, public health, safety or the environment;

(2) describe arrangements with local police departments, fire departments, hospitals, contractors and state and local emergency response teams to coordinate emergency services;

(3) list the emergency coordinator's name; address; and office, home and mobile phone numbers (where more than one person is listed, one shall be named as the primary emergency coordinator);

(4) include a list, which shall be kept current, of emergency equipment at the surface waste management facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems and decontamination equipment, containing a physical description of each item on the list and a brief outline of its capabilities;

(5) include an evacuation plan for surface waste management facility personnel that describes signals to be used to begin evacuation, evacuation routes and alternate evacuation routes in cases where fire or releases of wastes could block the primary routes;

(6) include an evaluation of expected contaminants, expected media contaminated and procedures for investigation, containment and correction or remediation;

(7) list where copies of the contingency plan will be kept, which shall include the surface waste management facility; local police departments, fire departments and hospitals; and state and local emergency response teams;

(8) indicate when the contingency plan will be amended, which shall be within five working days whenever:

(a) the surface waste management facility permit is revised or modified;

(b) the plan fails in an emergency;

(c) the surface waste management facility changes design, construction, operation, maintenance or other circumstances in a way that increases the potential for fires, explosions or releases of oil field waste constituents that could threaten fresh water, public health, safety or the environment or change the response necessary in an emergency;

(d) the list of emergency coordinators or their contact information changes; or

(e) the list of emergency equipment changes;

(9) describe how the emergency coordinator or the coordinator's designee, whenever there is an imminent or actual emergency situation, will immediately;

(a) activate internal surface waste management facility alarms or communication systems, where applicable, to notify surface waste management facility personnel; and

(b) notify appropriate state and local agencies with designated response roles if their assistance is needed;

(10) describe how the emergency coordinator, whenever there is a release, fire or explosion, will immediately identify the character, exact source, amount and extent of released materials (the emergency coordinator may do this by observation or review of surface waste management facility records or manifests, and, if necessary, by chemical analysis) and describe how the emergency coordinator will concurrently assess possible hazards to fresh water, public health, safety or the environment that may result from the release, fire or explosion (this assessment shall consider both the direct and indirect hazard of the release, fire or explosion);

(11) describe how, if the surface waste management facility stops operations in response to fire, explosion or release, the emergency coordinator will monitor for leaks, pressure buildup, gas generation or rupture in valves, pipes or the equipment, wherever this is appropriate;

(12) describe how the emergency coordinator, immediately after an emergency, will provide for treating, storing or disposing of recovered oil field waste, or other material that results from a release, fire or explosion at a surface waste management facility;

(13) describe how the emergency coordinator will ensure that no oil field waste, which may be incompatible with the released material, is treated, stored or disposed of until cleanup procedures are complete; and

(14) provide that the emergency coordinator may amend the plan during an emergency as necessary to protect fresh water, public health, safety or the environment.

O. Gas safety management plan. Each operator of a surface waste management facility that includes a landfill shall have a gas safety management plan that describes in detail procedures and methods that will be used to prevent landfill-generated gases from interfering or conflicting with the landfill's operation and protect fresh water, public health, safety and the environment. The plan shall address anticipated amounts and types of gases that may be generated, an air monitoring plan that includes the vadose zone and measuring, sampling, analyzing, handling, control and processing methods. The plan shall also include final post closure monitoring and control options.

P. Training program. Each operator shall conduct an annual training program for key personnel that includes general operations, permit conditions, emergencies proper sampling methods and identification of exempt and non-exempt waste and hazardous waste. The operator shall maintain records of such training, subject to division inspection, for five years.

[19.15.36.13 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08]

19.15.36.14 SPECIFIC REQUIREMENTS APPLICABLE TO LANDFILLS:

A. General operating requirements.

(1) The operator shall confine the landfill's working face to the smallest practical area and compact the oil field waste to the smallest practical volume. The operator shall not use equipment that may damage the integrity of the liner system in direct contact with a geosynthetic liner.

(2) The operator shall prevent unauthorized access by the public and entry by large animals to the landfill's active portion through the use of fences, gates, locks or other means that attain equivalent protection.

(3) The operator shall prevent and extinguish fires.

(4) The operator shall control litter and odors.

(5) The operator shall not excavate a closed cell or allow others to excavate a closed cell except as approved by the division.

(6) The operator shall provide adequate cover for the landfill's active face as needed to control dust, debris, odors or other nuisances, or as otherwise required by the division.

(7) For areas of the landfill that will not receive additional oil field waste for one month or more, but have not reached the final waste elevation, the operator shall provide intermediate cover that shall be:

(a) approved by the division;

(b) stabilized with vegetation; and

(c) inspected and maintained to prevent erosion and manage infiltration or leachate during the oil field waste deposition process.

(8) When the operator has filled a landfill cell, the operator shall close it pursuant to the conditions contained in the surface waste management facility permit and the requirements of Paragraph (2) of Subsection D of 19.15.36.18 NMAC. The operator shall notify the division's environmental bureau at least three working days prior to a landfill cell's closure.

B. Ground water monitoring program. If fresh ground water exists at a site, the operator shall, unless otherwise approved by the division, establish a ground water monitoring program, approved by the division's environmental bureau, which shall include a ground water monitoring work plan, a sampling and analysis plan, a ground water monitoring system and a plan for reporting ground water monitoring results. The ground water monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

(1) represent the quality of background ground water that leakage from a landfill has not affected; and

(2) represent the quality of ground water passing beneath and down gradient of the surface waste management facility.

C. Landfill design specification. New landfill design systems shall include a base layer and a lower geomembrane liner (*e.g.*, composite liner), a leak detection system, an upper geomembrane liner, a leachate collection and removal system, a leachate collection and removal system protective layer, an oil field waste zone and a top landfill cover.

(1) The base layer shall, at a minimum, consist of two feet of clay soil compacted to a minimum 90 percent standard proctor density (ASTM D-698)(Copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. This document is available for public viewing at the New Mexico state records center and archives and may not be reproduced, in full or in part. A copy of this publication may be obtained from ASTM international, www.astm.org.) with a hydraulic conductivity of 1 x 10^{-7} cm/sec or less. In areas where no ground water is present, the operator may propose an alternative base layer design, subject to division approval.

(2) The lower geomembrane liner shall consist of a 30-mil flexible [~~poly vinyl chloride (PVC)~~] PVC or 60-mil [~~high density polyethylene (HDPE)~~] HDPE liner, or an equivalent liner approved by the division.

(3) The operator shall place the leak detection system, which shall consist of two feet of compacted soil with a saturated hydraulic conductivity of 1 x 10^{-5} cm/sec or greater, between the lower and upper geomembrane liners. The leak detection system shall consist of a drainage and collection system placed no more than six inches above the lower geomembrane liner in depressions and sloped so as to facilitate the earliest possible leak detection at designated collection points. Drainage piping shall be designed to withstand chemical attack from oil field waste and leachate and structural loading and other stresses and disturbances from overlying oil field waste, cover materials, equipment operation, expansion or contraction, and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the landfill sub-grade and drainage pipes and laterals shall be at least two percent grade; *i.e.*, two feet of vertical drop per 100 horizontal feet. The piping collection network shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid drainage pipe to convey collected liquids to a corrosion-proof sump or sumps located outside the landfill's perimeter for observation, storage, treatment or disposal. The operator may install alternative designs as approved by the division.

(4) The operator shall place the upper geomembrane liner, which shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division, over the leak detection system.

(5) The operator shall place the leachate collection and removal system, which shall consist of at least two feet of compacted soil with a saturated hydraulic conductivity of 1 x 10^{-2} cm/sec or greater, over the upper geomembrane liner to facilitate drainage. The leachate collection and removal system shall consist of a drainage and collection and removal system placed no more than six inches above the upper geomembrane liner in depressions and sloped so as to facilitate the maximum leachate collection. Piping shall be designed to withstand chemical attack from oil field waste or leachate and structural loading and other stresses and disturbances from overlying oil field waste, cover materials, equipment operation, expansion or contraction and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the upper geomembrane liner and drainage lines and laterals shall be at least two percent grade; *i.e.*, two feet of vertical drop per 100 horizontal feet. The piping collection network shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid drainage pipe to convey collected fluids outside the landfill's perimeter for storage, treatment and disposal. The operator may install alternative designs as approved by the division.

(6) The operator shall place the leachate collection and removal system protection layer, which shall consist of a soil layer at least one foot thick with a saturated hydraulic conductivity of 1 x 10^{-2} cm/sec or greater, over the leachate collection and removal system.

(7) The operator shall place oil field waste over the leachate collection and removal system protective layer.

(8) The top landfill cover design shall consist of the following layers (top to bottom): a soil erosion layer composed of at least 12 inches of fertile topsoil re-vegetated in accordance with the post closure provisions of Subparagraph (b) of Paragraph (2) of Subsection D of 19.15.36.18 NMAC; a protection or frost protection layer composed of 12 to 30 inches of native soil; a drainage layer composed of at least 12 inches of sand or gravel with a saturated hydraulic conductivity of 1 x 10^{-2} cm/sec or greater and a minimum bottom slope of four percent, a hydraulic barrier-layer-geomembrane (minimum of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division); and a gas vent or foundation layer composed of at least 12 inches of sand or gravel above oil field waste with soils compacted to the minimum 80 percent Standard Proctor Density. The operator shall install the top landfill cover within one year of achieving the final landfill cell waste elevation. The operator shall ensure that the final landfill design elevation of the working face of the oil field waste is achieved in a timely manner with the date recorded in a field construction log. The operator shall also record the date of top landfill cover installation to document the timely installation of top landfill covers. The operator shall provide a minimum of three working days notice to the division in advance of the top landfill cover's installation to allow the division to witness the top landfill cover's installation.

(9) Alternatively, the operator may propose a performance-based landfill design system using geosynthetics or geocomposites, including geogrids, geonets, geosynthetic clay liners, composite liner systems, etc., when supported by EPA's "hydrologic evaluation of landfill performance" (HELP) model or other division-approved model. The operator shall design the landfill to prevent the "bathtub effect". The bathtub effect occurs when a more permeable cover is placed over a less permeable bottom liner or natural subsoil.

(10) External piping, *e.g.*, leachate collection, leak detection and sump removal systems shall be designed for installation of a sidewall riser pipe. Pipes shall not penetrate the liner with the exception of gas vent or collection wells where the operator shall install a flexible clamped pipe riser through the top landfill cover liner that will accommodate oil field waste settling and will prevent tears.

D. Liner specifications and requirements.

(1) General requirements.

(a) Geomembrane liner specifications. Geomembrane liners shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division. Geomembrane liners shall have a hydraulic conductivity no greater than 1 x 10^{-9} cm/sec. Geomembrane liners shall be composed of impervious, geosynthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Liners shall also be resistant to ultraviolet light, or the operator shall make provisions to protect the material from sunlight. Liner compatibility shall comply with EPA SW-846 method 9090A.

(b) Liners shall be able to withstand projected loading stresses, settling and disturbances from overlying oil field waste, cover materials and equipment operations.

(c) [~~Operators~~] The operator shall construct liners with a minimum of two percent slope to promote positive drainage and to facilitate leachate collection and leak detection.

(2) Additional requirements for geomembranes.

(a) Geomembranes shall be compatible with the oil field waste to be disposed. Geomembranes shall be resistant to chemical attack from the oil field waste or leachate. The operator shall demonstrate this by means of the manufacturer's test reports, laboratory analyses or other division-approved method.

(b) Geosynthetic material the operator installs on a slope greater than 25 percent shall be designed to withstand the calculated tensile forces acting upon the material. The design shall consider the maximum friction angle of the geosynthetic with regard to a soil-geosynthetic or geosynthetic-geosynthetic interface and shall ensure that overall slope stability is maintained.

(c) The operator shall thermally seal (hot wedge) field seams in geosynthetic material with a double track weld to create an air pocket for non-destructive air channel testing. In areas where double-track welding cannot be achieved, the operator may propose alternative thermal seaming methods. A stabilized air pressure of 35[~~pounds per square inch (psi)~~] psi, plus or minus one percent, shall be maintained for at least five minutes. The operator shall overlap liners four to six inches before seaming, and shall orient seams parallel to the line of maximum slope; *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. The operator shall use factory seams whenever possible. The operator shall not install horizontal seams within five feet of the slope's toe. Qualified personnel shall perform all field seaming.

E. Requirements for the soil component of composite liners.

(1) The operator shall place and compact the base layer to 90 percent standard proctor density on a prepared subgrade.

(2) The soil surface upon which the operator installs a geosynthetic shall be free of stones greater than one half inch in any dimension, organic matter, local irregularities, protrusions, loose soil and abrupt changes in grade that could damage the geosynthetic.

(3) The operator shall compact a clay soil component of a composite liner to a minimum of 90 percent standard proctor density, which shall have, unless otherwise approved by the division, a plasticity index greater than 10 percent, a liquid limit between 25 and 50 percent, a portion of material passing the no. 200 sieve (0.074 mm and less fraction) greater than 40 percent by weight; and a clay content greater than 18 percent by weight.

F. The leachate collection and removal system protective layer and the soil component of the leak detection system shall consist of soil materials that shall be free of organic matter, shall have a portion of material passing the no. 200 sieve no greater than five percent by weight and shall have a uniformity coefficient (Cu) less than 6, where Cu is defined as D60/D10. Geosynthetic materials or geocomposites including geonets and geotextiles, if used as components of the leachate collection and removal or leak detection system, shall have a hydraulic conductivity, transmissivity and chemical and physical qualities that oil field waste placement, equipment operation or leachate generation will not adversely affect. These geosynthetics or geocomposites, if used in conjunction with the soil protective cover for liners, shall have a hydraulic conductivity designed to ensure that the liner's hydraulic head never exceeds one foot.

G. Landfill gas control systems. If the gas safety management plan or requirements of other federal, state or local agencies require the installation of a gas control system at a landfill, the operator shall submit a plan for division approval, which shall include the following:

(1) the system's design, indicating the location and design of vents, barriers, collection piping and manifolds and other control measures that the operator will install (gas vent or collection wells shall incorporate a clamped and seamed pipe riser design through the top cover liner);

(2) if gas recovery is proposed, the design of the proposed gas recovery system and the system's major on-site components, including storage, transportation, processing, treatment or disposal measures required in the management of generated gases, condensates or other residues;

(3) if gas processing is proposed, a processing plan designed in a manner that does not interfere or conflict with the activities on the site or required control measures or create or cause danger to persons or property;

(4) if gas disposal is proposed, a disposal plan designed:

(a) in a manner that does not interfere or conflict with the activities on the site or with required control measures;

(b) so as not to create or cause danger to persons or property; and

(c) with active forced ventilation, using vents located at least one foot above the landfill surface at each gas vent's location;

(5) physical and chemical characterization of condensates or residues that are generated and a plan for their disposal;

(6) means that the operator will implement to prevent gas' generation and lateral migration such that

(a) the concentration of the gases the landfill generates does not exceed 25 percent of the lower explosive limit for gases in surface waste management facility structures (excluding gas control or recovery system components); and

(b) the concentration of gases does not exceed the lower explosive limit for gases at the surface waste management facility boundary; and

(7) a routine gas monitoring program providing for monitoring at least quarterly; the specific type and frequency of monitoring to be determined based on the following:

(a) soil conditions;

(b) the hydrogeologic and hydraulic conditions surrounding the surface waste management facility; and

(c) the location of surface waste management facility structures and property lines.

H. Landfill gas response. If gas levels exceed the limits specified in Paragraph (6) of Subsection G of 19.15.36.14 NMAC, the operator shall:

(1) immediately take all necessary steps to ensure protection of fresh water, public health, safety and the environment and notify the division;

(2) within seven days of detection, record gas levels detected and a description of the steps taken to protect fresh water, public health, safety and the environment;

(3) within 30 days of detection, submit a remediation plan for gas releases

that describes the problem's nature and extent and the proposed remedy; and

(4) within 60 days after division approval, implement the remediation plan and notify the division that the plan has been implemented.

[19.15.36.14 NMAC - N, 2/14/2007; A, 12/1/08]

19.15.36.15 SPECIFIC REQUIREMENTS APPLICABLE TO LANDFARMS:

A. Oil field waste acceptance criteria. Only soils and drill cuttings predominantly contaminated by petroleum hydrocarbons shall be placed in a landfarm. The division may approve placement of tank bottoms in a landfarm if the operator demonstrates that the tank bottoms do not contain economically recoverable petroleum hydrocarbons. Soils and drill cuttings placed in a landfarm shall be sufficiently free of liquid content to pass the paint filter test, and shall not have a chloride concentration exceeding 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or exceeding 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste. The person tendering oil field waste for treatment at a landfarm shall certify, on form C-138, that representative samples of the oil field waste have been subjected to the paint filter test and tested for chloride content, and that the samples have been found to conform to these requirements. The landfarm's operator shall not accept oil field waste for landfarm treatment unless accompanied by this certification.

B. Background testing. Prior to beginning operation of a new landfarm or to opening a new cell at an existing landfarm at which the operator has not already established background, the operator shall take, at a minimum, 12 composite background soil samples, with each consisting of 16 discrete samples from areas that previous operations have not impacted at least six inches below the original ground surface, to establish background soil concentrations for the entire surface waste management facility. The operator shall analyze the background soil samples for [~~total petroleum hydrocarbons (TPH)~~] TPH, as determined by [~~United States environmental protection agency (EPA)~~] EPA method 418.1 or other EPA method approved by the division; BTEX, as determined by EPA SW-846 method 8021B or 8260B; chlorides; and other constituents listed in Subsections A and B of 20.6.2.3103 NMAC, using approved EPA methods.

C. Operation and oil field waste treatment.

(1) The operator shall berm each landfarm cell to prevent rainwater run-on and run-off.

(2) The operator shall not place contaminated soils received after the effective date of 19.15.36 NMAC within 100 feet of the surface waste management facility's boundary.

(3) The operator shall not place contaminated soils received at a landfarm after the effective date of 19.15.36 NMAC within 20 feet of a pipeline crossing the landfarm.

(4) With 72 hours after receipt, the operator shall spread and disk contaminated soils in eight-inch or less lifts or approximately 1000 cubic yards per acre per eight-inch lift or biopile.

(5) The operator shall ensure that soils are disked biweekly and biopiles are turned at least monthly.

(6) The operator shall add moisture, as necessary, to enhance bioremediation and to control blowing dust.

(7) The application of microbes for the purposes of enhancing bioremediation requires prior division approval.

(8) Pooling of liquids in the landfarm is prohibited. The operator shall remove freestanding water within 24 hours.

(9) The operator shall maintain records of the landfarm's remediation activities in a form readily accessible for division inspection.

(10) The division's environmental bureau may approve other treatment procedures if the operator demonstrates that they provide equivalent protection for fresh water, public health, safety and the environment.

D. Treatment zone monitoring. The operator shall spread contaminated soils on the surface in eight-inch or less lifts or approximately 1000 cubic yards per acre per eight-inch lift. The operator shall conduct treatment zone monitoring to ensure that prior to adding an additional lift the TPH concentration of each lift, as determined by EPA SW-846 method 8015M or EPA method 418.1 or other EPA method approved by the division, does not exceed 2500 mg/kg and that the chloride concentration, as determined by EPA method 300.1, does not exceed 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste. The operator shall collect and analyze at least one composite soil sample, consisting of four discrete samples, from the treatment zone at least semi-annually using the methods specified below for TPH and chlorides. The maximum thickness of treated soils in a landfarm cell shall not exceed two feet or approximately 3000 cubic yards per acre. When that thickness is reached, the operator shall not place additional oil field waste in the landfarm cell until it has demonstrated by monitoring the treatment zone at least semi-annually that the contaminated soil has been treated to the standards specified in Subsection F of 19.15.36.15 NMAC or the contaminated soils have been removed to a division-approved surface waste management facility.

E. Vadose zone monitoring.

(1) Sampling. The operator shall monitor the vadose zone beneath the treatment zone in each landfarm cell. The operator shall take the vadose zone samples from soils between three and four feet below the cell's original ground surface.

(2) Semi-annual monitoring program. The operator shall collect and analyze a minimum of four randomly selected, independent samples from the vadose zone at least semi-annually using the methods specified below for TPH, BTEX and chlorides and shall compare each result to the higher of the [~~practical quantitation limit (PQL)~~] PQL or the background soil concentrations to determine whether a release has occurred.

(3) Five year monitoring program. The operator shall collect and analyze a minimum of four randomly selected, independent samples from the vadose zone, using the methods specified below for the constituents listed in Subsections A and B of 20.6.2.3103 NMAC at least every five years and shall compare each result to the higher of the PQL or the background soil concentrations to determine whether a release has occurred.

(4) Record keeping. The operator shall maintain a copy of the monitoring reports in a form readily accessible for division inspection.

(5) Release response. If vadose zone sampling results show that the concentrations of TPH, BTEX or chlorides exceed the higher of the PQL or the background soil concentrations, then the operator shall notify the division's environmental bureau of the exceedance, and shall immediately collect and analyze a minimum of four randomly selected, independent samples for TPH, BTEX, chlorides and the constituents listed in Subsections A and B of 20.6.2.3103 NMAC. The operator shall submit the results of the re-sampling event and a response action plan for the division's approval within 45 days of the initial notification. The response action plan shall address changes in the landfarm's operation to prevent further contamination and, if necessary, a plan for remediating existing con-

tamination.

F. Treatment zone closure performance standards. After the operator has filled a landfarm cell to the maximum thickness of two feet or approximately 3000 cubic yards per acre, the operator shall continue treatment until the contaminated soil has been remediated to the higher of the background concentrations or the following closure performance standards. The operator shall demonstrate compliance with the closure performance standards by collecting and analyzing a minimum of one composite soil sample, consisting of four discrete samples.

(1) Benzene, as determined by EPA SW-846 method 8021B or 8260B, shall not exceed 0.2 mg/kg.

(2) Total BTEX, as determined by EPA SW-846 method 8021B or 8260B, shall not exceed 50 mg/kg.

(3) The [~~gasoline range organics (GRO)~~] GRO and [~~diesel range organics (DRO)~~] DRO combined fractions, as determined by EPA SW-846 method 8015M, shall not exceed 500 mg/kg. TPH, as determined by EPA method 418.1 or other EPA method approved by the division, shall not exceed 2500 mg/kg.

(4) Chlorides, as determined by EPA method 300.1, shall not exceed 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste.

(5) The concentration of constituents listed in Subsections A and B of 20.6.2.3103 NMAC shall be determined by EPA SW-846 methods 6010B or 6020 or other methods approved by the division. If the concentration of those constituents exceed the PQL or background concentration, the operator shall either perform a site specific risk assessment using EPA approved methods and shall propose closure standards based upon individual site conditions that protect fresh water, public health, safety and the environment, which shall be subject to division approval or remove pursuant to Paragraph (2) of Subsection G of 19.15.36.15 NMAC.

G. Disposition of treated soils.

(1) If the operator achieves the closure performance standards specified in Subsection F of 19.15.36.15 NMAC, then the operator may either leave the treated soils in place, or, with prior division approval, dispose or reuse of the treated soils in an alternative manner.

(2) If the operator cannot achieve the closure performance standards specified in Subsection F of 19.15.36.15 NMAC within five years or as extended by the division, then the operator shall remove contaminated soils from the landfarm cell and properly dispose of it at a division-permitted landfill, or reuse or recycle it in a manner approved by the division.

(3) If the operator cannot achieve the closure performance standards specified in Subsection F of 19.15.36.15 NMAC within five years or as extended by the division, then the division may review the adequacy of the operator's financial assurance, as provided in Subsection G of 19.15.36.11 NMAC. In that event, the division may require the operator to modify its financial assurance to provide for the appropriate disposition of contaminated soil in a manner acceptable to the division.

(4) The operator may request approval of an alternative soil closure standard from the division, provided that the operator shall give division-approved public notice of an application for alternative soil closure standards in the manner provided in 19.15.36.9 NMAC. The division may grant the request administratively if no person files an objection thereto within 30 days after publication of notice; otherwise the division shall set the matter for hearing.

H. Environmentally acceptable bioremediation endpoint approach.

(1) A landfarm operator may use an environmentally acceptable bioremediation endpoint approach to landfarm management in lieu of compliance with the requirements of Paragraph (3) of Subsection F of 19.15.36.15 NMAC. The bioremediation endpoint occurs when TPH, as determined by EPA method 418.1 or other EPA method approved by the division, is reduced to a minimal concentration as a result of bioremediation and is dependent upon the bioavailability of residual hydrocarbons. An environmentally acceptable bioremediation endpoint occurs when the TPH concentration has been reduced by at least 80 percent by a combination of physical, biological and chemical processes and the rate of change in the reduction in the TPH concentration is negligible. The environmentally acceptable bioremediation endpoint in soil is determined statistically by the operator's demonstration that the rate of change in the reduction of TPH concentration is negligible.

(2) In addition to the requirements specified in Subsection C of 19.15.36.8 NMAC, an operator who plans to use an environmentally acceptable bioremediation endpoint approach shall submit for the division's review and approval a detailed landfarm operation plan for those landfarm cells exclusively dedicated to the use of the environmentally acceptable bioremediation endpoint approach. At a minimum, the operations plan shall include detailed information on the native soils, procedures to characterize each lift of contaminated soil, operating procedures and management procedures that the operator shall follow.

(3) In addition to other operational requirements specified in 19.15.36.15 NMAC, the operator using an environmentally acceptable bioremediation endpoint approach shall comply with the following.

(a) Native soil information required. The operator shall submit detailed information on the soil conditions present for each of its landfarm cells immediately prior to the application of the petroleum hydrocarbon-contaminated soils, including: treatment cell size, soil porosity, soil bulk density, soil pH, moisture content, field capacity, organic matter concentration, soil structure, [~~sodium adsorption ratio (SAR), electrical conductivity (EC)~~] SAR, EC, soil composition, soil temperature, soil nutrient (C:N:P) (calcium, nitrogen and phosphate) concentrations and oxygen content.

(b) Characterization of contaminated soil. The operator shall submit a description of the procedures that it will follow to characterize each lift of contaminated soil or drill cuttings, prior to treating each lift of contaminated soil or drill cuttings, for petroleum hydrocarbon loading factor, TPH, BTEX, chlorides, constituents listed in Subsections A and B of 20.6.2.3103 NMAC, contaminated soil moisture, contaminated soil pH and API gravity of the petroleum hydrocarbons.

(c) Operating procedures. The operator shall submit a description of the procedures, including a schedule, that it shall follow to properly monitor and amend each lift of contaminated soil in order to maximize bioremediation, including tilling procedures and schedule; procedures to limit petroleum hydrocarbon loading to less than five percent; procedures to maintain pH between six and eight; procedures to monitor and apply proper nutrients; procedures to monitor, apply and maintain moisture to 60 to 80 percent of field capacity; and procedures to monitor TPH concentrations.

(d) Management procedures. The operator shall submit a description of the management procedures that it shall follow to properly schedule landfarming operations, including modifications during cold weather, record keeping, sampling and analysis, statistical procedures, routine reporting, determination and reporting of achievement of the environmentally acceptable bioremediation endpoint and closure and post-closure plans.

[19.15.36.15 NMAC - N, 2/14/2007; A, 12/1/08]

19.15.36.16 SMALL LANDFARMS: Small landfarms as defined in Paragraph (5) of Subsection A of 19.15.36.7 NMAC are exempt from 19.15.36 NMAC except for the requirements specified in 19.15.36.16 NMAC.

A. General [~~rules~~] requirements.

(1) Registration. Prior to establishment of a new small landfarm, the operator shall file a form C-137 EZ, small landfarm registration, with the environmental bureau in the division's Santa Fe office. If the operator is not the surface estate owner at the proposed site, the operator shall furnish with its form C-137 EZ its certification it has a written agreement with the surface estate owner authorizing the site's use for the proposed small landfarm. The division shall issue the operator a registration number no more than 30 days from receipt of the properly completed form.

(2) Limitation. The operator shall operate only one active small landfarm per governmental section at any time. No small landfarm shall be located more than one mile from the operator's nearest oil or gas well or other production facility.

B. General operating [~~rules~~] procedures. The operator shall:

(1) comply with the siting requirements of Subsections A and B of 19.15.36.13 NMAC;

(2) accept only exempt or non-hazardous wastes consisting of soils (excluding drill cuttings) generated as a result of accidental releases from production operations, that are predominantly contaminated by petroleum hydrocarbons, do not contain free liquids, would pass the paint filter test and where testing shows chloride concentrations are 500 mg/kg or below;

(3) berm the landfarm to prevent rainwater run-on and run-off; and

(4) post a sign at the site readable from a distance of 50 feet and listing the operator's name; small landfarm registration number; location by unit letter, section, township and range; expiration date; and an emergency contact telephone number.

C. Oil field waste management standards. The operator shall spread and disk contaminated soils in a single eight inch or less lift within 72 hours of receipt. The operator shall conduct treatment zone monitoring to ensure that the TPH concentration, as determined by EPA SW-846 method 8015M or EPA method 418.1 or other EPA method approved by the division, does not exceed 2500 mg/kg and that the chloride concentration, as determined by EPA method 300.1, does not exceed 500 mg/kg. The operator shall treat soils by disking at least once a month and by watering and adding bioremediation enhancing materials when needed.

D. Record-keeping requirements. The operator shall maintain records reflecting the generator, the location of origin, the volume and type of oil field waste, the date of acceptance and the hauling company for each load of oil field waste received. The division shall post on its website each small landfarm's location, operator and registration date. In addition, the operator shall maintain records of the small landfarm's remediation activities in a form readily accessible for division inspection. The operator shall maintain all records for five years following the small landfarm's closure.

E. Small landfarm closure.

(1) Closure performance standards and disposition of soils. If the operator achieves the closure performance standards specified below, then the operator may return the soil to the original generation site, leave the treated soil in place at the small landfarm or, with prior division approval, dispose or reuse the treated soil in an alternative manner. If the operator cannot achieve the closure performance standards within three years from the registration date, then the operator shall remove contaminated soil from the landfarm and properly dispose of it at a permitted landfill, unless the division authorizes a specific alternative disposition. The following standards shall apply:

(a) benzene, as determined by EPA SW-846 method 8021 B or 8260B, shall not exceed 0.2 mg/kg;

(b) Total BTEX, as determined by EPA SW-846 method 8021 B or 8260B, shall not exceed 50 mg/kg;

(c) TPH, as determined by EPA SW-846 method 418.1 or other EPA method approved by the division, shall not exceed 2500 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, shall not exceed 500 mg/kg; and

(d) chlorides, as determined by EPA method 300.1, shall not exceed 500 mg/kg.

(2) Closure requirements. The operator shall:

(a) re-vegetate soils remediated to the closure performance standards if left in place in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(b) remove landfarmed soils that have not or cannot be remediated to the closure performance standards within three years to a division-approved surface waste management facility, and re-vegetate the cell filled in with native soil to the standards in Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(c) if the operator returns remediated soils to the original site, or with division permission, recycles them, re-vegetate the cell filled in with native soil to the standards in Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(d) remove berms on the small landfarm and buildings, fences, roads and equipment; and

(e) clean up the site and collect one vadose zone soil sample from three to five feet below the middle of the treatment zone, or in an area where liquids may have collected due to rainfall events; the vadose zone soil sample shall be collected and analyzed using the methods specified above for TPH, BTEX and chlorides.

F. Final report. The operator shall submit a final closure report on a form C-137 EZ, together with photographs of the closed site, to the environmental bureau in the division's Santa Fe office. The division, after notice to the operator and an opportunity for a hearing if requested, may require additional information, investigation or clean up activities.

[19.15.36.16 NMAC - N, 2/14/2007; A, 12/1/08]

19.15.36.18 CLOSURE AND POST CLOSURE:

A. Surface waste management facility closure by operator.

(1) The operator shall notify the division's environmental bureau at least 60 days prior to cessation of operations at the surface waste management facility and provide a proposed schedule for closure. Upon receipt of such notice and proposed schedule, the division shall review the current closure plan for adequacy and inspect the surface waste management facility.

(2) The division shall notify the operator within 60 days after the date of cessation of operations specified in the operator's closure notice of modifications of the closure plan and proposed schedule or additional requirements that it determines are necessary for the protection of fresh water, public health, safety or the environment.

(3) If the division does not notify the operator of additional closure requirements within 60 days as provided, the operator may proceed with closure in accordance with the approved closure plan; provided that the director may, for good cause, extend the time for the division's response for an additional period not to exceed 60 days by written notice to the operator.

(4) The operator shall be entitled to a hearing concerning a modification or additional requirement the division seeks to impose if it files an application for a hearing within 10 days after receipt of written notice of the proposed modifications or additional requirements.

(5) Closure shall proceed in accordance with the approved closure plan and schedule and modifications or additional requirements the division imposes.

During closure operations the operator shall maintain the surface waste management facility to protect fresh water, public health, safety and the environment.

(6) Upon completion of closure, the operator shall re-vegetate the site unless the division has approved an alternative site use plan as provided in Subsection G of 19.15.36.18 NMAC. Re-vegetation, except for landfill cells, shall consist of establishment of a vegetative cover equal to 70 percent of the native perennial vegetative cover (un-impacted by overgrazing, fire or other intrusion damaging to native vegetation) or scientifically documented ecological description consisting of at least three native plant species, including at least one grass, but not including noxious weeds, and maintenance of that cover through two successive growing seasons.

B. Release of financial assurance.

(1) When the division determines that closure is complete it shall release the financial assurance, except for the amount needed to maintain monitoring wells for the applicable post closure care period, to perform semi-annual analyses of such monitoring wells and to re-vegetate the site. Prior to the partial release of the financial assurance covering the surface waste management facility, the division shall inspect the site to determine that closure is complete.

(2) After the applicable post closure care period has expired, the division shall release the remainder of the financial assurance if the monitoring wells show no contamination and the re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC is successful. If monitoring wells or other monitoring or leak detection systems reveal contamination during the surface waste management facility's operation or in the applicable post closure care period following the surface waste management facility's closure the division shall not release the financial assurance until the contamination is remediated in accordance with [~~19.15.1.19 or 19.15.3.116 NMAC~~] 19.15.30 NMAC and 19.15.29 NMAC, as applicable.

(3) In any event, the division shall not finally release the financial assurance until it determines that the operator has successfully re-vegetated the site in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC, or, if the division has approved an alternative site use plan, until the landowner has obtained the necessary regulatory approvals and begun implementation of the use.

C. Surface waste management facility closure initiated by the division. Forfeiture of financial assurance.

(1) For good cause, the division may, after notice to the operator and an opportunity for a hearing, order immediate cessation of a surface waste management facility's operation when it appears that cessation is necessary to protect fresh water, public health, safety or the environment, or to assure compliance with statutes or division rules and orders. The division may order closure without notice and an opportunity for hearing in the event of an emergency, subject to NMSA 1978, Section 70-2-23, as amended.

(2) If the operator refuses or is unable to conduct operations at a surface waste management facility in a manner that protects fresh water, public health, safety and the environment; refuses or is unable to conduct or complete an approved closure plan; is in material breach of the terms and conditions of its surface waste management facility permit; or the operator defaults on the conditions under which the division accepted the surface waste management facility's financial assurance; or if disposal operations have ceased and there has been no significant activity at the surface waste management facility for six months the division may take the following actions to forfeit all or part of the financial assurance:

(a) send written notice by certified mail, return receipt requested, to the operator and the surety, if any, informing them of the decision to close the surface waste management facility and to forfeit the financial assurance, including the reasons for the forfeiture and the amount to be forfeited, and notifying the operator and surety that a hearing request or other response shall be made within 10 days of receipt of the notice; and

(b) advise the operator and surety of the conditions under which they may avoid the forfeiture; such conditions may include but are not limited to an agreement by the operator or another party to perform closure and post closure operations in accordance with the surface waste management facility permit conditions, the closure plan (including modifications or additional requirements imposed by the division) and division rules, and satisfactory demonstration that the operator or other party has the ability to perform such agreement.

(3) The division may allow a surety to perform closure if the surety can demonstrate an ability to timely complete the closure and post closure in accordance with the approved plan.

(4) If the operator and the surety do not respond to a notice of proposed forfeiture within the time provided, or fail to satisfy the specified conditions for non-forfeiture, the division shall proceed, after hearing if the operator or surety has timely requested a hearing, to declare the financial assurance's forfeiture. The division may then proceed to collect the forfeited amount and use the funds to complete the closure, or, at the division's election, to close the surface waste management facility and collect the forfeited amount as reimbursement.

(a) The division shall deposit amounts collected as a result of forfeiture of financial assurance in the oil and gas reclamation fund.

(b) In the event the amount forfeited and collected is insufficient for closure, the operator shall be liable for the deficiency. The division may complete or authorize completion of closure and post closure and may recover from the operator reasonably incurred costs of closure and forfeiture in excess of the amount collected pursuant to the forfeiture.

(c) In the event the amount collected pursuant to the forfeiture was more than the amount necessary to complete closure, including remediation costs, and forfeiture costs, the division shall return the excess to the operator or surety, as applicable, reserving such amount as may be reasonably necessary for post closure monitoring and re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC. The division shall return excess of the amount retained over the actual cost of post closure monitoring and re-vegetation to the operator or surety at the later of the conclusion of the applicable post closure period or when the site re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC is successful.

(5) If the operator abandons the surface waste management facility or cannot fulfill the conditions and obligations of the surface waste management facility permit or division rules, the state of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the state shall have all rights of entry into, over and upon the surface waste management facility property, including all necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation, termination and closure of the surface waste management facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials and all other rights necessary for the surface waste management facility's operation, termination and closure in accordance with the surface waste management facility permit and to conduct post closure monitoring.

D. Surface waste management facility and cell closure and post closure standards. The following minimum standards shall apply to closure and post closure of the installations indicated, whether the entire surface waste management facility is being closed or only a part of the surface waste management facility.

(1) Oil treating plant closure. The operator shall ensure that:

(a) tanks and equipment used for oil treatment are cleaned and oil field waste is disposed of at a division-approved surface waste management facility (the operator shall reuse, recycle or remove tanks and equipment from the site within 90 days of closure);

(b) the site is sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, test methods for evaluating solid waste, physical/chemical methods, for TPH, BTEX, major cations and anions and RCRA metals, in accordance with a gridded plat of the site containing at least four equal sections that the division has approved; and

(c) sample results are submitted to the environmental bureau in the division's Santa Fe office.

(2) Landfill cell closure.

(a) The operator shall properly close landfill cells, covering the cell with a top cover pursuant to Paragraph (8) of Subsection C of 19.15.36.14 NMAC, with soil contoured to promote drainage of precipitation; side slopes shall not exceed a 25 percent grade (four feet horizontal to one foot vertical), such that the final cover of the landfill's top portion has a gradient of two percent to five percent, and the slopes are sufficient to prevent the ponding of water and erosion of the cover material.

(b) The operator shall re-vegetate the area overlying the cell with native grass covering at least 70 percent of the landfill cover and surrounding areas, consisting of at least two grasses and not including noxious weeds or deep rooted shrubs or trees, and maintain that cover through the post closure period.

(3) Landfill post closure. Following landfill closure, the post closure care period for a landfill shall be 30 years.

(a) A post closure care and monitoring plan shall include maintenance of cover integrity, maintenance and operation of a leak detection system and leachate collection and removal system and operation of gas and ground water monitoring systems.

(b) The operator or other responsible entity shall sample existing ground water monitoring wells annually and submit reports of monitoring performance and data collected within 45 days after the end of each calendar year. The operator shall report any exceedance of a ground water standard that it discovers during monitoring pursuant to [~~19.15.3.116 NMAC~~] 19.15.29 NMAC.

(4) Landfarm closure. The operator shall ensure that:

(a) disking and addition of bioremediation enhancing materials continues until soils within the cells are remediated to the standards provided in Subsection F of 19.15.36.15 NMAC, or as otherwise approved by the division;

(b) soils remediated to the foregoing standards and left in place are re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(c) landfarmed soils that have not been or cannot be remediated to the standards in Subsection F of 19.15.36.15 NMAC are removed to a division-approved surface waste management facility and the landfarm remediation area is filled in with native soil and re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(d) if treated soils are removed, the cell is filled in with native soils and re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(e) berms are removed;

(f) buildings, fences, roads and equipment are removed, the site cleaned-up and tests conducted on the soils for contamination;

(g) annual reports of vadose zone and treatment zone sampling are submitted to the division's environmental bureau until the division has approved the surface waste management facility's final closure; and

(h) for [~~operators~~] an operator who [~~choose~~] chooses to use the landfarm methods specified in Subsection H of 19.15.36.15 NMAC, that the soil has an [~~electrical conductivity (EC_e)~~] EC_S of less than or equal to 4.0 mmhos/cm (dS/m) and a SAR of less than or equal to 13.0.

E. Pond and pit closure. The operator shall ensure that:

(1) liquids in the ponds or pits are removed and disposed of in a division-approved surface waste management facility;

(2) liners are disposed of in a division-approved surface waste management facility;

(3) equipment associated with the surface waste management facility is removed;

(4) the site is sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, test methods for evaluating solid waste, physical/chemical methods for TPH, BTEX, metals and other inorganics listed in Subsections A and B of [~~20.69.2.3103~~] 20.6.2.3103 NMAC, in accordance with a gridded plat of the site containing at least four equal sections that the division has approved; and

(5) sample results are submitted to the environmental bureau in the division's Santa Fe office.

F. Landfarm and pond and pit post closure. The post-closure care period for a landfarm or pond or pit shall be three years if the operator has achieved clean closure. During that period the operator or other responsible entity shall regularly inspect and maintain required re-vegetation. If there has been a release to the vadose zone or to ground water, then the operator shall comply with the applicable requirements of [~~19.15.1.19 and 19.15.3.116 NMAC~~] 19.15.30 NMAC and 19.15.29 NMAC.

G. Alternatives to re-vegetation. If the landowner contemplates use of the land where a cell or surface waste management facility is located for purposes inconsistent with re-vegetation, the landowner may, with division approval, implement an alternative surface treatment appropriate for the contemplated use, provided that the alternative treatment will effectively prevent erosion. If the division approves an alternative to re-vegetation, it shall not release the portion of the operator's financial assurance reserved for post-closure until the landowner has obtained necessary regulatory approvals and begun implementation of such alternative use.

[19.15.36.18 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 90 FIELD CITATIONS

20.2.90.1 ISSUING AGENCY. Environmental Improvement Board.
[20.2.90.1 NMAC - N, 12/12/08]

20.2.90.2 SCOPE. This part applies to the field citation program for minor violations of the Air Quality Control Act, NMSA 1978, Sections 74-2-1 to 74-2-17, the air quality regulations, 20.2 NMAC, and any permit issued under the act or regulations.
[20.2.90.2 NMAC - N, 12/12/08]

20.2.90.3 STATUTORY AUTHORITY. Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 to 74-2-17, including specifically NMSA 1978, Section 74-2-12.

20.2.90.4 DURATION. Permanent.
[20.2.90.4 NMAC - N, 12/12/08]

20.2.90.5 EFFECTIVE DATE. 12/12/2008, except where a later date is cited at the end of a section.
[20.2.90.5 NMAC - N, 12/12/08]

20.2.90.6 OBJECTIVE. The objective of this part is to implement the provisions of NMSA 1978, Section 74-2-12 of the Air Quality Control Act establishing a field citation program for minor violations of the act, air quality regulations and permits issued under the act and regulations.
[20.2.90.6 NMAC - N, 12/12/08]

20.2.90.7 DEFINITIONS. As used in this part, the following definitions apply. Terms defined in the act or regulations and not defined in this part are used consistent with the meanings provided in the act or regulations.

A. "Act" means the Air Quality Control Act, NMSA 1978, Sections 74-2-1 to 74-2-17.

B. "Air quality regulations" or "regulations" mean the air quality (statewide) regulations compiled at 20.2 NMAC.

C. "Department" means the New Mexico environment department.

D. "Division" means the environmental protection division of the department.

E. "Field citation" means a written document issued by the division alleging a minor violation that sets forth the nature of the alleged minor violation and, if applicable, an assessment of a penalty.

F. "Hearing officer" means the individual appointed by the secretary to conduct a proceeding under this part.

G. "Minor violation" means an failure of a person to comply with any requirement or condition of any applicable provision of the Air Quality Control Act, air quality regulations, or a permit issued under the act or regulations that, with the exception of minor violations of 20.2.60 NMAC, Open Burning, and 20.2.65 NMAC, Smoke Management, meets all of the following criteria:

(1) does not result in or contribute to, an increase in emissions of any air contaminant;

(2) does not cause an increase in emissions of any toxic air contaminant in excess of any emission standard or limitation or other state or federal requirement that is applicable to that toxic air contaminant;

(3) does not cause or contribute to the violation of any state or federal ambient air quality standard; and

(4) does not hinder the ability of the department to determine compliance with any other applicable air quality state or federal law, rule, regulation, information request, order, variance, permit, or other requirement.

H. "Party" means the appellant and the division.

I. "Person" means an individual, entity, source, facility, business or company.

J. "Secretary" means the secretary of the department, or any person who assumes the role of secretary for purposes of this part in the event of the secretary's disqualification, recusal or delegation of authority to another person.
[20.2.90.7 NMAC - N, 12/12/08]

20.2.90.8 CONSTRUCTION. This part shall be liberally construed to carry out its purpose.
[20.2.90.8 NMAC - N, 12/12/08]

20.2.90.9 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.
[20.2.90.9 NMAC - N, 12/12/08]

20.2.90.10 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local laws.
[20.2.90.10 NMAC - N, 12/12/08]

20.2.90.11 to 20.2.90.107 [RESERVED]

20.2.90.108 GENERAL PROVISIONS - COMPUTATION OF TIME. In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, three days is added to the prescribed period. The three-day extension does not apply to any deadline under the Air Quality Control Act.
[20.2.90.108 NMAC - N, 12/12/08]

20.2.90.109 REQUIREMENTS. For the purposes of this part, the following requirements shall apply to the issuance of, and response to, a field citation.

A. A person who is issued a field citation pursuant to this part shall have the period specified from the date of service of the field citation in which to achieve compliance. Within five (5) working days of achieving compliance, the person who received the field citation shall sign the citation, stating that the person has complied with the citation and return it to the department address provided in the citation. A false statement that compliance has been achieved shall constitute a violation of this part.

B. The department may require a person subject to a field citation to submit reasonable and necessary information to support a claim of compliance.

C. Nothing in this part shall be construed as preventing the re-inspection of a source or facility to ensure that the minor violation(s) cited in the field citation has been corrected.

D. Notwithstanding any other provision of this part, if a person fails to comply with a field citation within the prescribed period, or if the department determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to any person(s) or to the environment, the department may take any enforcement action authorized by law.

E. If a person wishes to request a hearing on the alleged minor violation(s) cited or penalty assessed in the field citation, the person may file a hearing request as prescribed in 20.2.90.110 NMAC.

F. If a person does not file a hearing request, that person shall pay the penalty assessed in the field citation within thirty (30) calendar days of service of the field citation.

G. Payment of a penalty assessed in a field citation issued pursuant to this part shall not be a defense to further enforcement by the department to correct a violation cited in the field citation or to assess the maximum statutory penalty pursuant to the Air Quality Control Act if the violation continues.

H. Any person who fails to comply with the compliance requirements of a field citation by the date specified or who fails to pay a penalty assessed within thirty (30) calendar days of service of the field citation may be subject to further enforcement action pursuant to the Air Quality Control Act.

I. The department may issue a warning, without penalty, as a field citation for the first offense.
[20.2.90.109 NMAC - N, 12/12/08]

20.2.90.110 FIELD CITATIONS: HEARING REQUESTS.

A. Any person who receives a field citation from the department may request a hearing before the department. The request must be made in writing to the secretary within fifteen (15) working days after the field citation has been issued, with completed assessment of penalty, if any, and shall include a copy of the field citation. Unless a hearing request is

received by the secretary within fifteen (15) working days after the field citation is issued, the decision of the department shall be final.

B. If a hearing request is received within the fifteen (15) working days time limit, the secretary shall hold a hearing within fifteen (15) working days after receipt of the request. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

C. The department shall present the field citation and supporting evidence first, followed by the appellant who has the burden of proving no violation had occurred and shall present any evidence to support the request for hearing.

D. Hearings shall be held at a place designated by the secretary unless other mutually agreed upon arrangements are made. The secretary may designate a hearing officer to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

E. Motions. All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, state the relief sought, and state whether it is opposed or unopposed. Each motion may be accompanied by an affidavit, certificate, or other evidence relied upon and shall be served upon the secretary or hearing officer and the other parties. An unopposed motion shall state that concurrence of all other parties was obtained. Any party upon whom an opposed motion is served shall have an opportunity to file a response. To expedite the proceedings, no replies shall be allowed except upon leave from the hearing officer.

F. Discovery. No discovery shall be allowed, including requests for admission, interrogatories, and depositions.

G. Upon request, the hearing shall be recorded. The person who requests the recording shall pay recording costs.

H. In field citation hearings, the rules governing civil procedure and evidence in district court do not apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open and for how long and for what reason it will be left open.

I. Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within fifteen (15) working days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice. Appeals from the secretary's final decision are by NMSA 1978, Section 74-2-9.

J. Pursuant to 20.1.5.2 NMAC, these hearing procedures supersede the procedures provided in 20.1.5 NMAC.

[20.2.90.110 NMAC - N, 12/12/08]

20.2.90.111 PENALTIES. First time violators of the field citation rule who demonstrate cooperation in compliance may be fined up to one hundred dollars ($100.00) per violation. First time violators of the field citation rule who fail to demonstrate cooperation in compliance may be fined up to two hundred dollars ($200.00) per violation. Multiple time violators of the field citation rule who demonstrate cooperation in compliance may be fined up to five hundred dollars ($500.00) per violation. Multiple time violators of the field citation rule who fail to demonstrate cooperation in compliance may be fined up to one thousand dollars ($1,000.00) per violation. Provided, however, that penalties assessed in a field citation shall not exceed one thousand dollars ($1,000.00) per day per violation or a maximum of fifteen thousand dollars ($15,000.00). In determining the amount of a penalty to be assessed pursuant to this section, the person issuing the field citation shall take into account the seriousness of the violation, any good-faith effort to comply with the applicable requirements and other relevant factors.

[20.2.90.111 NMAC - N, 12/12/08]

20.2.90.112 SERVICE OF FIELD CITATION. Service of a field citation shall be accomplished by any of the following methods:

A. personal service by a department representative who shall obtain the signature of a person who is an owner, operator, employee, or representative of the source, facility or property being inspected at the time the field citation is issued, with a copy of the signed citation sent by certified first class mail to the facility's operations headquarters when appropriate; if such person refuses or fails to sign the field citation, the failure or refusal to sign shall not affect the validity of service nor of the citation or subsequent proceedings; or

B. service by certified first class mail.

[20.2.90.112 NMAC - N, 12/12/08]

HISTORY OF 20.2.90 NMAC: [RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 11.5.1 NMAC Section 7, effective 12/31/08.

11.5.1.7 DEFINITIONS:

A. General: Unless otherwise specified, the terms used in 11.5.1 NMAC through 11.5.4 NMAC and 11.5.6 NMAC shall be construed in accordance with definitions contained in the state act. In addition, the following terms have the indicated meanings.

(1) "Bureau" means the occupational health and safety bureau of the department, or any other bureau of the department to which responsibility for enforcement of the state act may be assigned.

(2) "Chief" means the chief of the bureau or his or her designee.

(3) "Commission" means the occupational health and safety review commission.

(4) "Compliance officer" means a department employee who is carrying out the provisions of the state act.

(5) "Compliance program manager" means the person in the bureau who is primarily responsible for managing the compliance program.

(6) "Counsel" means an attorney licensed to practice law.

(7) "Department" means the New Mexico environment department.

(8) "Employee representative" means a representative of the employee's recognized or certified bargaining agent.

(9) "Imminent danger situations" means those situations in a place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the enforcement provisions otherwise provided by the state act.

(10) "Interviewee" means the individual being questioned by the department's representative.

(11) "On-site consultation" means an inspection conducted by the bureau pursuant to Subsection B of 50-9-6 NMSA 1978.

(12) "Personal counsel" means counsel for an employee who requests representation for an employee interview, but does not want to use employer counsel. The employer may, if the employee requests such counsel prior to the interview, or the employer must, if employee uses company

counsel during the interview and a conflict of interest arises during the interview in violation of the New Mexico rules of professional conduct, retain and pay for a counsel for the [~~employee~~]employee: (i) who is not currently representing the employer; (ii) does not have a retainer agreement with the employer; (iii) is not in-house counsel with the employer; (iv) will have a duty to represent employee in the context of the OSHA investigation; (v) will abide by the relevant New Mexico rules of professional conduct and (vi) and is a comparable attorney to the employer's counsel.

(13) "Private" means:

(a) for employee interviews, to the exclusion of an employer or employer representative, except if employee requests employee's representative, or requests employer counsel and both employer and employee consent in writing to the dual representation and the counsel abides by the relevant New Mexico rules of professional conduct; and

(b) for employer interviews, to the exclusion of an employee or employee representative.

(14) "Secretary" means the secretary of the environment department.

(15) "State act" means the Occupational Health and Safety Act, NMSA 1978, Sections 50-9-1 to 50-9-25, as it may be amended from time to time.

(16) "Trade secret" means the whole or any portion of a phase of any scientific or technical information, design, process, procedure, formula or improvement that is secret and of value. A trade secret shall be presumed to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(17) "USDOL" means the United States department of labor.

B. Terms in incorporated federal standards: Terms in the federal occupational safety and health standards incorporated by reference in 11.5.1 NMAC through 11.5.4 NMAC and 11.5.6 NMAC shall be construed to be references to the corresponding entities in the state occupational health and safety program.

(1) "Act" shall be construed to mean the corresponding section of the state act.

(2) "Assistant secretary of labor" shall be construed to mean the secretary.

(3) "OSHA area director or area office" shall be construed to mean the compliance program manager.

(4) "OSHA area office" shall be construed to mean the bureau.

[8/30/73, 9/3/78, 3/21/79, 5/10/81, 1/19/94, 5/1/95, 1/1/96; 11.5.1.7 NMAC - Rn & A, 11 NMAC 5.1.12, 10/30/08; A, 12/31/08]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.400 NMAC, Section 10, effective December 1, 2008

8.200.400.10 BASIS FOR DEFINING GROUP: Individuals are eligible for medicaid if they meet the specific criteria for one of the eligibility categories. In New Mexico, other medical assistance programs for individuals who do not qualify for medicaid are available, such as the children's medical services program (category 007) administered by the New Mexico department of health.

A. **Assistance groups:** The HSD income support division (ISD) determines eligibility for individuals applying for medicaid.

(1) Category 002 provides medicaid for families with dependent child(ren) for individuals who meet July 16, 1996 AFDC related eligibility criteria.

(2) Category 027 provides four [~~(4)~~] months of medicaid if category 002 medicaid eligibility is lost due to increased child support.

(3) Transitional medicaid (category 028) extends medicaid benefits up to [~~twelve (12)~~] 12 months for families who lose category 002 medicaid eligibility due to increased earnings or loss of the earned income disregard.

(4) Category 033 provides medicaid for individuals who are ineligible for category 002 medicaid due to income or resources deemed from a stepparent, grandparent, or sibling.

B. **Medical assistance for women and children:** ISD offices establish eligibility for medical assistance for women and children (MAWC) categories. For these categories, medicaid coverage does not depend on one or both parents being dead, absent, disabled, or unemployed. Children and pregnant women in intact families may be eligible for these medicaid categories.

(1) **Category 030:** This category provides the full range of medicaid coverage for pregnant women in families meeting AFDC income and resource standards.

(2) **Category 031:** This category provides [~~twelve (12)~~] 12 months of medicaid coverage for babies born to mothers who, at the time of the birth, were either eligible for and receiving New Mexico medicaid or were deemed to have been eligible for and receiving New Mexico medicaid. To receive the full [~~twelve (12)~~] 12 months of coverage, all of the following criteria must be met:

(a) The mother remains eligible for New Mexico medicaid (or would be eligible if she were still pregnant).

(b) The baby remains with the mother.

(c) Both mother and baby continue to reside in New Mexico.

(3) **Category 032:** This category provides medicaid coverage to children who are under 19 years of age in families with incomes under 235 [~~%~~] percent of federal income poverty guidelines. Uninsured children in families with income between 185-235 [~~%~~] percent of FPL are eligible for the state children's health insurance program (SCHIP). Certain additional eligibility criteria are applicable under SCHIP, as well as co-payment requirements. Native American children are exempt from co-payments.

(4) **Category 035:** This category provides medicaid coverage for pregnancy-related services for pregnant women and family planning services for women in families whose income is below 185[~~%~~] percent of the federal income poverty level. There is no resource test for this category.

C. **Supplemental security income:** Eligibility for supplemental security income (SSI) is determined by the social security administration. This program provides cash assistance and medicaid for eligible aged (category 001), blind (category 003) or disabled (category 004) recipients. ISD offices determine medicaid eligibility for individuals who are ineligible for SSI due to income or resources deemed from stepparents (category 034).

D. **Medicaid extension:** Medicaid extension provides medicaid coverage for individuals who lose eligibility for SSI due to a cost of living increase in social security benefits and to individuals who lose SSI for other specific reasons. Under the "Pickle Amendment" to the Social Security Act, medicaid coverage is extended to individuals who lose SSI for any reason which no longer exists and who meet SSI eligibility criteria when social security cost-of-living increases are disregarded.

(1) Individuals who meet the following requirements may also be eligible for medicaid extension:

(a) widow(er)s between [~~sixty (60) and sixty-four (64)~~] 60 and 64 years of age who lose SSI eligibility due to receipt of or increase in early widow(er)s' Title II benefits; eligibility ends when an individual becomes eligible for part A medicare or reaches age [~~sixty-five (65)~~] 65;

(b) certain disabled adult children (DACs) who lose SSI eligibility due to receipt of or increase in Title II DAC benefits;

(c) certain disabled widow(er)s and disabled surviving divorced spouses who lose SSI eligibility due to receipt of or

increase in disabled widow(er)s or disabled surviving divorced spouse's Title II benefit; medicaid eligibility ends when individuals become eligible for part A medicare;

(d) non-institutionalized individuals who lose SSI eligibility because the amount of their initial Title II benefits exactly equals the income ceiling for the SSI program; and

(e) certain individuals who become ineligible for SSI cash benefits and, therefore, medicaid as well, may receive up to two [~~(2)~~] months of extended medicaid benefits while they apply for another category of medicaid.

(2) Medicaid extension categories include individuals who are [~~sixty-five (65)~~] 65 years and older (category 001), individuals who are less than [~~sixty-five (65)~~] 65 years of age and blind (category 003) and individuals who are less than [~~sixty-five (65)~~] 65 years of age and disabled (category 004).

E. **Institutional care medicaid:** ISD offices establish eligibility for institutional care medicaid. Individuals who are aged (category 081), blind (category 083) or disabled (category 084) must require institutional care in nursing facilities (NFs), intermediate care facilities for the mentally retarded (ICF-MRs), or acute care hospitals and meet all SSI eligibility criteria, except income, to be eligible for these medicaid categories.

F. **Home and community-based waiver services:** ISD offices establish the financial eligibility for individuals who apply for medicaid under one of the home and community based waiver programs. Individuals must meet the resource, income, and level of care standards for institutional care; however, these individuals receive services at home. Mi via is a self-directed waiver encompassing the five waiver categories. It is available as a possible option to the traditional case management services provided in the five waiver programs. The waiver programs are listed below:

(1) acquired immunodeficiency syndrome (AIDS) and AIDS-related condition (ARC) waiver. (category 090);

(2) disabled and elderly waiver - aged (category 091), blind (category 093), disabled (category 094);

(3) medically fragile waiver (category 095); and

(4) developmental disabilities waiver (category 096); and

(5) brain injury (category 092) under the mi via waiver.

G. **Qualified medicare beneficiaries:** Medicaid covers the payment of medicare premiums as well as deductible and coinsurance amounts for medicare-covered services under the qualified medicare beneficiaries (QMB) program for individuals who meet certain income and resource standards (category 040). To be eligible, an individual must have or be conditionally eligible for medicare hospital insurance (medicare part A).

H. **Qualified disabled working individuals:** Medicaid covers the payment of part A medicare premiums under the qualified disabled working individuals (QDs) program for individuals who lose entitlement to free part A medicare due to gainful employment (category 042). To be eligible, individuals must meet the social security administration's definition of disability and be enrolled for premium part A. These individuals must also meet certain income and resource standards. They are not entitled to additional medicaid benefits and do not receive medicaid cards.

I. **Specified low-income medicare beneficiaries:** Medicaid covers the payment of medicare part B premiums under the specified low-income medicare beneficiaries (SLIMB) program for individuals who meet certain income and resource standards (category 945). To be eligible, individuals must already have medicare part A. They are not entitled to additional medicaid benefits and do not receive medicaid cards.

J. **Medical assistance for refugees:** Low-income refugees may be eligible for medical and cash assistance. Eligibility for refugee assistance programs is determined by the ISD offices. To be eligible for cash assistance and medical coverage (category 019) or medical coverage only (category 049), a refugee must meet the income criteria for AFDC programs. Refugee medical assistance is limited to an eight [~~(8)~~] month period starting with the month a refugee enters the United States. Refugee medical assistance is approved only in the following instances:

(1) refugees meet the AFDC standard of need when the earned income disregard is applied;

(2) refugees meet all criteria for refugee cash assistance but wish to receive only refugee medical assistance;

(3) refugees receive a four [~~(4)~~] month refugee medical assistance extension when eligibility for refugee cash assistance is lost due to earned income; or

(4) refugee spends-down to the AFDC standard of need (category 059).

K. **Emergency medical services for aliens:** Medicaid covers emergency services for certain [~~nonqualified, illegal, undocumented, or non-immigrant aliens who meet all eligibility criteria for one of the existing medicaid categories,~~] noncitizens who are undocumented or who do not meet the qualifying immigration criteria specified in 8.200.410.11 NMAC, *citizenship*, but who meet all eligibility criteria for one of the categories noted in 8.285.400 NMAC, *Recipient Policies,* except for citizenship or legal alien status. These individuals must receive emergency services from a medicaid provider and then go to an ISD office for an evaluation of medicaid eligibility. Once an eligibility determination is made, the [~~alien~~] individual must notify the servicing provider so that the claim can be submitted to [~~MAD or its~~] MAD's designee for [~~a medical necessity~~] the emergency services evaluation and claim payment.

L. **Children, youth, and families medicaid:** Medicaid covers children in state foster care programs (category 006, category 046, category 066, category 086) and in adoption subsidy situations (category 017, category 037, and category 047) when the child's income is below the AFDC need standard for one person. Medicaid also covers children who are the full or partial responsibility of the children, youth, and families department (CYFD) such as category 060 and category 061. The eligibility determination for these categories is made by CYFD.

M. **Working disabled individuals:** The working disabled individuals (WDI) program (category 043) covers disabled individuals who are either employed, or who lost eligibility for supplemental security income (SSI) and medicaid due to the initial receipt of social security disability insurance (SSDI) and who do not yet qualify for medicare.

N. **Breast and cervical cancer:** The breast and cervical cancer (BCC) program (category 052) covers uninsured women, under the age of 65 who have been screened and diagnosed as having breast or cervical cancer, including pre-cancerous conditions by a contracted provider for the centers for disease control and prevention's national breast and cervical cancer early detection program (NBCCEDP).

O. **State coverage insurance:** The state coverage insurance (SCI) program (category 062) covers uninsured adults ages 19-64 who: have no other health insurance and are not eligible for other government insurance programs; have income levels up to 200 [~~%~~] percent of the federal poverty limit (FPL); comply with income and eligibility requirements as specified in 8.262.400 NMAC, *Recipient Policies,* 8.262.500 NMAC, *Income and Resource Standards*, and 8.262.600 NMAC, *Benefit Description*, are employed by an employer who purchases an SCI employer group policy or who participate in an individual policy.

P. **Medicare part D - low income subsidy:** The subsidy program (category 048) available to individuals enrolled in part D of medicare and whose gross income is less than 150[~~%~~] percent of the federal poverty level (FPL). This subsidy helps pay the cost of premiums,

deductibles, and co-payments.

Q. **Program of all-inclusive care for the elderly:** The program of all-inclusive care for the elderly (PACE), (categories 081, 083, and 084) covers all acute and long-term care needs of adults age 55 years or older who meet level of care requirements for medicaid nursing facility care.

R. **Mi via waiver:** The waiver provides self-directed services to waiver recipients who are disabled or elderly (D&E), developmentally disabled (DD), medically fragile (MF), those diagnosed with acquired immunodeficiency syndrome (AIDS), and those diagnosed with certain brain injuries (BI).

[2-1-95; 1-1-97; 4-1-98; 6-30-98; 3-1-99; 8.200.400.10 NMAC - Rn, 8 NMAC 4.MAD.402 & A, 7-1-01; A, 7-1-02; A, 10-1-02; A, 7-1-05; A, 2-1-06; A, 12-1-06; A/E, 12-1-06; A, 12-1-08]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.285.400 NMAC, Sections 5, 9, 10, 12, 13, 14, 17 and 19, effective December 1, 2008. This rule was also renumbered and reformatted from 8 NMAC 4 ESA.000 and ESA.400 to comply with NMAC requirements.

8.285.400.5 EFFECTIVE DATE: February 1, 1995, unless a later date was cited at the end of a section.

[2/1/95; 8.285.400.5 NMAC - Rn, 8 NMAC 4.ESA.000.5 & A, 12/1/08]

8.285.400.9 EMERGENCY MEDICAL SERVICES FOR UNDOCUMENTED ALIENS - CATEGORY 085: [~~Nonqualified, undocumented, illegal, and nonimmigrant aliens who meet all eligibility criteria for medicaid 02, categories 030, 032, 035 or SSI, except for citizenship or legal alien status, can receive coverage for emergency services. See 42 CFR Section 440.225.~~] Certain non-citizens who are undocumented or who do not meet the qualifying immigration criteria specified in 8.200.410.11 NMAC, but who meet all eligibility criteria for medicaid categories 030, 032, 035, 072, or SSI can receive coverage for emergency services. See 42 CFR Section 440.225.

[2/1/95; 4/30/98; 8.285.400.9 NMAC - Rn, 8 NMAC 4.ESA.400 & A, 12/1/08]

8.285.400.10 BASIS FOR DEFINING THE GROUP:

[~~**A.** Medical services qualifying as a bona fide emergency are covered for the duration of the emergency. The process requires a 100 percent prepayment review. No prior approval is given for any services, as the services would not, by definition, meet the criteria for emergency services. **Definition of emergency:**~~] The determination of emergency status is made by the [~~medical assistance division (MAD) or its designee.~~] medicaid utilization review contractor. For purposes of determining emergency status, the following definition applies. An "emergency" is a medical condition, including all emergency labor and delivery, inductions and cesarean sections, manifested by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. [~~See Section MAD-769, Emergency Services for Undocumented Aliens.~~] See 8.325.10 NMAC, *Emergency Services for Aliens*.

[~~(1) Emergency labor and delivery services: Coverage of emergency labor and delivery services is available from the time the mother is first treated for active labor until the mother and child are stabilized. The child is not eligible for newborn coverage under category 031.~~

~~(2) Child's eligibility: In some instances, a child can have legal alien or citizenship status due to its birth in the United States. In these cases, the child can be eligible for category 032 or AFDC. If the child is not eligible for any of these categories and the services the child received qualified as emergency services, an application for category 085 for the child can be made at the same time as the mother's application.~~]

[2/1/95; 8.285.400.10 NMAC - Rn, 8 NMAC 4.ESA.402 & A, 12/1/08]

8.285.400.12 ENUMERATION: An alien applicant is exempt from the requirement to provide a social security number. If the applicant is found eligible for coverage of emergency services, the claims are paid using a dummy number. Issuance of the dummy number is done on [~~"interim state ID - computer issuance system".~~] the current eligibility system.

[2/1/95; 8.285.400.12 NMAC - Rn, 8 NMAC 4.ESA.411 & A, 12/1/08]

8.285.400.13 CITIZENSHIP: [~~An alien applicant must be a nonqualified, undocumented, illegal, or nonimmigrant alien. Verification of non-immigrant status is required.~~] An applicant must be a noncitizen who is undocumented or who does not meet the qualifying immigration criteria specified in 8.200.410.11 NMAC, *Citizenship.*

[2/1/95; 4/30/98; 8.285.400.13 NMAC - Rn, 8 NMAC 4.ESA.412 & A, 12/1/08]

8.285.400.14 RESIDENCE: An [~~alien~~] applicant must provide proof of New Mexico residence. Undocumented aliens traveling through New Mexico, visiting in New Mexico, or touring New Mexico do not meet the residence requirements for eligibility.

[2/1/95; 8.285.400.14 NMAC - Rn, 8 NMAC 4.ESA.413 & A, 12/1/08]

8.285.400.17 SSI STATUS: [~~Aliens~~] Applicants who apply under SSI coverage must meet the income and resource limits. Eligibility is determined using the SSI methodology contained in [~~Section SSI, Supplemental Security Income Methodology~~] Title 8, Chapter 215 NMAC, Medicaid Eligibility - Supplemental Security Income (SSI) Methodology. Disability is determined by disability determination services.

[2/1/95; 8.285.400.17 NMAC - Rn, 8 NMAC 4.ESA.427 & A, 12/1/08]

8.285.400.19 ASSIGNMENT OF SUPPORT:

[~~**A.**~~] **Assignments of medical support:** As a condition of eligibility, applicants/recipients must [42 CFR Section 433.146; 27-2-28 (G) NMSA 1978 (Repl. Pamp. 1991):

[~~(1)~~] A. assign rights to medical support and payments to the human services department (HSD); the assignment authorizes HSD to pursue and make recoveries from liable third parties on the recipient's behalf;

[~~(2)~~] B. assign the rights to medical support and payments of other individuals eligible for medicaid, for whom he/she can legally make an assignment; and

[~~(3)~~] C. assign his/her individual rights to any medical care/support available under an order of a court or an administrative agency.

[~~**B. Assignment of parental support:** Assignment of parental support rights is required for all minor medicaid recipients with absent or deceased parents. By signing applications and receiving medicaid benefits, applicants/recipients have assigned support rights and agreed to cooperate with parental support requirements. See Section MAD-425, Eligibility Assignment and Cooperation Requirements. Medicaid benefits are not denied to an otherwise eligible applicant/recipient solely because he/she cannot legally assign his/her own support rights when the individual who is legally able to assign his/her rights refuses to assign or cooperate, as required by law.~~]

[2/1/95; 8.285.400.19 NMAC - Rn, 8 NMAC 4.ESA.434 & A, 12/1/08]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.285.500 NMAC, section 5, effective December 1, 2008. This rule was also renumbered and reformatted from 8 NMAC 4 ESA.000 and ESA.500 to comply with NMAC requirements.

8.285.500.5 EFFECTIVE DATE: February 1, 1995, unless a later date was cited at the end of a section.
[2/1/95; 8.285.500.5 NMAC - Rn, 8 NMAC 4.ESA.000.5 & A, 12/1/08]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.285.600 NMAC, sections 5, 9 - 13, effective December 1, 2008. This rule was also renumbered and reformatted from 8 NMAC 4 ESA.000 and ESA.600 to comply with NMAC requirements.

8.285.600.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.
[2/1/95; 8.285.600.5 NMAC - Rn, 8 NMAC 4.ESA.000.5 & A, 12/1/08]

8.285.600.9 BENEFIT DESCRIPTION: An applicant/recipient who is eligible for medicaid under this category is eligible [~~for medicaid coverage~~] for emergency services coverage only for the duration of the emergency.
[2/1/95; 8.285.600.9 NMAC - Rn, 8 NMAC 4.ESA.600 & A, 12/1/08]

8.285.600.10 BENEFIT DETERMINATION:

A. Subsequent to the receipt of emergency services, an applicant must apply [~~for coverage of services~~] through the local county income support division (ISD) office. The application must be filed at the ISD office no later than the last day of the third month following the month the presumed emergency services were received.

B. **Documentation requirements:** The [~~alien~~] applicant must bring a completed emergency medical services for aliens referral for eligibility determination form (MAD 308) to the ISD office for the financial eligibility determination. The emergency services provider must [~~completed~~] complete the referral form.

[~~(1)~~] **Financial documents:** The applicant must provide all necessary documentation to prove that he/she meets all financial and non-financial eligibility standards. Medical providers cannot submit eligibility applications on behalf of the [~~undocumented alien~~] applicant. The applicant must apprise medical providers of the status of the application. The applicant is financially responsible for any services not covered by medicaid. A completed and signed [~~application for assistance~~] application form must be submitted for each request for emergency medical services for aliens.

[~~(2) **Provider notice:** The applicant must give the medical service provider documentation of the approval of eligibility for medicaid. If the application is denied, the alien must notify providers of the denial. If medicaid eligibility is approved, the provider must be notified that he/she can now submit claims to MAD or its designee for medical review.~~

~~(3) **Responsibility for payment if medicaid coverage denied:** The applicant is responsible for payment for the medical services if he/she fails to apply promptly for coverage, verify eligibility for coverage, and/or notify the provider of the approval or denial of the medicaid application.~~]
[2/1/95; 4/30/98; 8.285.600.10 NMAC - Rn, 8 NMAC 4.ESA.620 & A, 12/1/08]

8.285.600.11 INITIAL BENEFITS: Applications for medicaid must be acted on within [~~forty-five (45)~~] 45 days of the date of application.

A. If an applicant is eligible for medicaid, the [~~income support specialist (ISS)~~] ISD worker notifies the individual of approval using notification of approval of application for emergency medical services for aliens form (MAD 310). The [~~ISS~~] approval of financial eligibility is not a guarantee that medicaid will pay for the services. The form also serves as notice of case closure, since medicaid covers only emergency services received during the specified term of the emergency. The applicant must give the medical service provider a copy of the MAD 310 form. The provider must use the MAD 310 to submit claims to the medicaid utilization review contractor for emergency review.

B. If an applicant is ineligible for medicaid or a decision on the application is delayed beyond the [~~forty-five (45)~~] 45 day time limit, the [~~ISS~~] ISD worker sends a notification of denial or delay of action on application for emergency medical services for aliens form (MAD 309) to the undocumented alien. The [~~form~~] MAD 309 explains the reason for denial or delay and informs the [~~individual~~] applicant of his/her right to an administrative hearing. If the application is denied, the applicant must notify providers of the denial.

C. The applicant is responsible for payment for the medical services if he/she fails to apply promptly for coverage, verify eligibility for coverage, or notify the provider of the approval or denial of the application.
[2/1/95; 4/30/98; 8.285.600.11 NMAC - Rn, 8 NMAC 4.ESA.623 & A, 12/1/08]

8.285.600.12 ONGOING BENEFITS: No periodic review is necessary, since [~~emergency medical services for aliens~~] this category does not result in continuous eligibility. [~~Only bona fide emergency services are covered and a medicaid card is not issued. Long term, follow-up, or continued care is, by definition, excluded from coverage.~~] The eligibility for the specific period will only cover the bona fide emergency services. A medicaid card is not issued. No separate notice of case closure is necessary. Notice of approval serves as notice of closure as it indicates the specific period of eligibility. Medicaid covers emergency services only for the duration of the emergency, as determined by [~~MAD or its designee~~] medicaid utilization review contractor.
[2/1/95; 4/30/98; 8.285.600.12 NMAC - Rn, 8 NMAC 4.ESA.624 & A, 12/1/08]

8.285.600.13 RETROACTIVE COVERAGE: [~~Up to three (3) months of retroactive coverage can be furnished to applicants who have received Medicaid-covered services which meets the definition of an emergency during the retroactive period and would have met applicable eligibility criteria had they applied during the three (3) months prior to the month of application [42 CFR Section 435.914.~~]

~~A. **Application for retroactive benefit coverage:** Application for retroactive medicaid can be made by checking "yes" in the "application for retroactive medicaid payments" box on the application/redetermination of eligibility for medicaid assistance (MAD 381) form or by checking "yes" to the question on "does anyone in your household have unpaid medical expenses in the last three (3) months?" on the application for assistance (ISD-100 S) form. Applications for retroactive medicaid benefits must be made by 180 days from the date of application for assistance. Medicaid-covered services which were furnished more than two (2) years prior to application are not covered.~~

~~B. **Approval requirements:** To establish retroactive eligibility, the ISS must verify that all conditions of eligibility were met for each of the three (3) retroactive months and that the applicant received medicaid-covered services. Each month must be approved or denied on its own merits. Retroactive eligibility can be approved on either the ISD2 system (for~~

~~categories programmed on that system) or on the retroactive medicaid eligibility authorization (ISD 333) form.~~

~~C. Notice:~~

~~(1) Notice to applicant: The applicant must be informed if any of the retroactive months are denied.~~

~~(2) Recipient responsibility to notify provider: After the retroactive eligibility has been established, the ISS must notify the recipient that he/she is responsible for informing all providers with outstanding bills of the retroactive eligibility determination. If the recipient does not inform all providers and furnish verification of eligibility which can be used for billing and the provider consequently does not submit the billing within 120 days from the date of approval of retroactive coverage, the recipient is responsible for payment of the bill.~~] There is no retroactive coverage for this category.

[2/1/95; 8.285.600.13 NMAC - Rn, 8 NMAC 4.ESA.625 & A, 12/1/08]

NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to Section 13 of 15.2.5 NMAC adding toe grabs no greater than four millimeters for Quarter horses and no greater than two millimeters for Thoroughbred horses as equipment and stating the penalty for a violation. Effective 12/01/08.

15.2.5.13 RUNNING OF THE RACE:

A. EQUIPMENT:

(1) No whip shall weigh more than one pound nor exceed 31 inches in length, including the popper. No whip shall be used unless it has affixed to the end a looped popper not less than one and one-quarter (1 1/4) inches in width, and not over three (3) inches in length, and be feathered above the popper with not less than three (3) rows of feathers, each feather not less than one (1) inch in length. There shall be no holes in the popper. All whips are subject to inspection and approval by the stewards.

(2) No bridle shall exceed two pounds.

(3) Toe grabs with a height greater than four millimeters worn on the front shoes of quarter horses and two millimeters worn on the front shoes of thoroughbred horses while racing are prohibited. The horse shall be scratched and the trainer may be subject to fine.

(4) A horse's tongue may be tied down with clean bandages, gauze or tongue strap.

(5) No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter, the paddock judge, and the stewards.

(6) No licensee may change any equipment used on a horse in its last race without approval of the paddock judge or stewards.

(7) All jockeys and exercise riders must wear a fastened protective helmet and fastened safety vest when mounted. The safety vest shall weigh no more than two pounds and shall be designed to provide shock-absorbing protection to the upper body of at least a rating of five, as defined by the British equestrian trade association (BETA).

NEW MEXICO REAL ESTATE COMMISSION

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11-16-2005) repealed 12-31-2008 and replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective 12-31-08.

NEW MEXICO REAL ESTATE COMMISSION

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 61 REAL ESTATE BROKERS
PART 3 REAL ESTATE BROKER'S LICENSE: EXAMINATION AND LICENSING APPLICATION REQUIREMENTS

16.61.3.1 ISSUING AGENCY: New Mexico Real Estate Commission.
[16.61.3.1 NMAC - Rp, 16.61.3.1 NMAC, 12-31-2008]

16.61.3.2 SCOPE: The provisions in Part 3 of Chapter 61 apply to all applicants for real estate broker licensure in New Mexico.
[16.61.3.2 NMAC - Rp, 16.61.3.2 NMAC, 12-31-2008]

16.61.3.3 STATUTORY AUTHORITY: Part 3 of Chapter 61 is promulgated pursuant to the Real Estate Licensing Law, NMSA 1978 Section 61-29-4.
[16.61.3.3 NMAC - Rp, 16.61.3.3 NMAC, 12-31-2008]

16.61.3.4 DURATION: Permanent.
[16.61.3.4 NMAC - Rp, 16.61.3.4 NMAC, 12-31-2008]

16.61.3.5 EFFECTIVE DATE: 12-31-2008, unless a later date is cited at the end of a section.
[16.61.3.5 NMAC - Rp, 16.61.3.5 NMAC, 12-31-2008]

16.61.3.6 OBJECTIVE: The objective of Part 3 of Chapter 61 is to set forth the examination and application requirements for candidates desiring to obtain a New Mexico real estate broker's license.
[16.61.3.6 NMAC - Rp, 16.61.3.6 NMAC, 12-31-2008]

16.61.3.7 DEFINITIONS: Refer to 16.61.1.7 NMAC.
[16.61.3.7 NMAC - Rp, 16.61.3.7 NMAC, 12-31-2008]

16.61.3.8 EXAMINATION AND LICENSING REQUIREMENTS: The New Mexico real estate commission issues two types of real estate broker's licenses; an associate broker's license and a qualifying broker's license. Both types of licenses are issued to individuals. There is no corporate real estate broker's license in New Mexico. An associate broker can hold only one associate broker's license and be affiliated with one qualifying broker at a time. A qualifying broker can be the qualifying broker for multiple brokerages, but cannot be a qualifying broker for one brokerage and an associate broker for another brokerage at the same time. The requirements for obtaining both types of licenses are described below.

A. Associate broker's license: prior to applying for an associate broker's license, an applicant must pass the real estate broker's examination prescribed by the commission.

B. Examination application.

(1) Applications to take the broker's examination are made directly to the commission's examination contractor on a form prescribed by the commission and provided by the contractor in a candidate information bulletin. Along with the application form, an applicant must submit certificates of completion of commission-approved thirty (30) hour pre-licensing courses in real estate principles and practice, real estate law, and broker basics.

(2) Exam candidates currently licensed as real estate salespersons or brokers in other states or jurisdictions will be exempted from completing the real estate principles and practice and real estate law courses in New Mexico if they can provide a certified license history from their resident licensing jurisdiction documenting that they have completed these courses or their equivalent.

(3) Except in a case of a license applicant from a state or jurisdiction with which the New Mexico real estate commis-

sion has a written license recognition agreement, an exam applicant cannot be exempted from completing the commission-approved thirty (30) hour broker basics course.

(4) License applicants currently licensed by state or jurisdiction with which the commission has a written license recognition agreement are not required to take any of the prescribed pre-licensing courses or take either portion of the broker's examination to be eligible to apply for a New Mexico broker's license.

(5) Exam applicants exempted from taking the real estate principles and practice and real estate law courses by virtue of having a current real estate broker's license in another state shall attach to their examination application a letter of pre-licensing education waiver from the commission and a certificate of completion of the thirty (30) hour broker basics course.

(6) All other applicants for the examination shall attach to their license examination application certificates documenting completion of one thirty (30) hour pre-licensing course each in real estate principles and practice, real estate law, and broker basics.

(7) At the time of making application to take the examination, applicants shall pay to the commission's examination contractor a non-refundable fee not to exceed $95.

(8) Applicants are required to pass both the state and national portions of the examination with a minimum score of 75 no later than ninety (90) calendar days after the first time they took the examination. Applicants failing to pass both portions of the examination within this time frame will be required to re-take and pass both portions of the examination before being eligible to apply for a broker's license.

C. License application.

(1) Upon passing both portions of the New Mexico real estate broker's examination, an individual has six months to apply for an associate broker's license on the application prescribed by the commission.

(2) An individual who fails to apply for an associate broker's license within six months of having passed both portions of the broker's examination shall be required to re-take both portions of the examination, unless he/she provides in writing to the commission a reasonable explanation for why he/she was unable to meet the six month deadline.

(3) An applicant for an associate broker's license shall be a legal resident of the United States and have reached the age of majority in New Mexico or in the state in which the applicant resides.

(4) Along with the license application form prescribed by the commission, the applicant must submit a written score report provided by the examination contractor documenting that he/she has passed both portions of the examination with a minimum score of 75, a completed arrest record check from the New Mexico department of public safety or the equivalent agency in their state of residence, a certificate of insurance documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in part 5 of the commission rules, and a non-refundable license application fee not to exceed $270.

D. Qualifying broker's license examination: there is no separate qualifying broker's examination.

E. License application.

(1) Before being issued a qualifying broker's license, an applicant must document that their associate broker's or equivalent license has been on active status with a real estate brokerage for two of the last five years immediately preceding their application to become a qualifying broker, and must provide a certificate of completion of the commission-approved thirty (30) hour brokerage office administration course. Applicants who can document that they were New Mexico qualifying broker's on or before December 31, 2005 are not subject to those requirements and may regain qualifying broker status by filling a trade name registration form and paying the trade name registration fee to the commission.

(2) Brokers who were salespersons on January 1, 2006 when the license law was amended to eliminate the salesperson category and were converted to associate broker status, shall in addition to meeting the requirements in the preceding section, document that they have met the requirements for and passed the associate broker's examination prior to being issued a qualifying broker's license.

(3) An application for a New Mexico qualifying broker's license shall be made on the form prescribed by the commission and shall be accompanied by a completed arrest record check from the New Mexico department of public safety or the equivalent agency in their state of residence, a certificate documenting that the applicant has a current errors and omissions insurance policy that meets the requirements for such insurance as described in part 5 of the commission rules, and a non-refundable license application fee not to exceed $270.

[16.61.3.8 NMAC - Rp, 16.61.3.8 NMAC, 12-31-2008]

HISTORY OF 16.61.3 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under: Real Estate License Law Manual, filed 10-2-73;

REC-9, filed as Rule No. 9 Amendment No. 2 Broker Examinations; Time for Filing; Place of, filed 6-15-79;

REC 80-2, filed as Rule No. 9 Amendment No. 3, Broker Examinations; Time for Filing, Place of, filed 7-17-80; REC 70-7, Broker Examinations - Time for Filing - Place of, filed 10-6-81;

REC 71-7, Broker Examinations - Time for Filing - Place of, filed 11-29-82;

Rule No. 2, Examinations-Requirements/Application for, filed 12-18-87;

NMREC Rule No. 2 Examination-Requirements/Application for, filed 10-3-94.

History of Repealed Material:

16 NMAC 61.3, Broker's License: Examination and Application Requirements (filed 6-25-97) repealed 1-1-2000.

16 NMAC 61.3, Broker's License: Examination and Licensing Requirements (filed 12-10-99) repealed 1-1-2002.

16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements (filed 11-30-2001) repealed 1-1-2006.

Other History:

That applicable portion of NMREC Rule No. 2 Examination-Requirements/Application for (filed 10-3-94) was renumbered, reformatted, and replaced by 16 NMAC 61.3, Broker's License: Examination and Application Requirements, effective 8-15-97.

16 NMAC 61.3, Broker's License: Examination and Application Requirements (filed 6-25-97) was replaced by 16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements, effective 1-1-2000.

16 NMAC 61.3, Broker's License: Examination and Licensing Application Requirements (filed 12-10-99) was replaced by 16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements, effective 1-1-2002.

16.61.3 NMAC, Broker's License: Examination and Licensing Application Requirements (filed 11-30-2001) was replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective 1-1-2006.

16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements (filed 11-16-2005) replaced by 16.61.3 NMAC, Real Estate Broker's License: Examination and Licensing Application Requirements, effective 12-31-08.

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.1 NMAC Section 7, effective 12-31-2008.

16.61.1.7 DEFINITIONS:

A. Agency: the fiduciary relationship created solely by the express written agency agreement between a person and a brokerage, authorizing the brokerage to act as agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission.

B. Agent: the brokerage authorized to act as a fiduciary for a person and to provide real estate services solely by means of an express written agreement.

C. Approved education course:[~~a continuing education course approved by the real estate commission dealing with selling, leasing, or managing residential, commercial and industrial property, as well as courses in basic real estate law and practice.~~] a commission approved course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

D. Approved training course: [~~all other continuing education courses approved by the commission with the exception of approved education courses and the mandatory course~~].A commission approved course offering in personal and property protection for the broker and clients; offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; offerings concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar offerings.

E. Associate broker: a person holding an associate broker's license who is affiliated with a qualifying broker.

F. Broker: any person holding a valid New Mexico associate broker's or qualifying broker's real estate license.

G. Brokerage: a licensed qualifying broker, the licensed real estate business represented by the qualifying broker and its affiliated associate brokers.

H. Brokerage relationship: the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission.

I. Broker duties: those duties established by the commission that are owed by all brokers to all clients and customers.

J. Broker in charge: a New Mexico licensed real estate broker who is eligible to be a qualifying broker designated by the qualifying broker to be responsible for real estate related activity within the brokerage during the temporary absence of the qualifying broker.

K. Client: a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission.

[~~L. Consumer: prospective sellers and buyers, lessors and lessees, landlords and tenants.~~]

[~~M~~] L. Credit hours(s): credits toward continuing education requirements as assigned by the real estate commission for each commission-approved course. May vary from actual classroom hours. Each credit hour shall consist of not less than fifty minutes of instruction within a sixty minute period.

[~~N~~] M. Criminal background check: a criminal background check of a first-time or renewal applicant for a New Mexico real estate broker's license on or after January 1, 2006 conducted by an entity or source approved by the commission.

[~~O~~] N. Custodial account: an account in the owner's name of which the qualifying broker is a trustee. Established for the purpose of holding monies received by the qualifying broker on behalf of the owner, and may be interest bearing.

[~~P~~] O. Customer: a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission.

[~~Q~~] P. Designated [~~broker: a qualifying broker or associate~~] agent: an associate broker who is designated in writing by [~~a~~] their qualifying broker to serve as exclusive agent [~~or exclusive transaction broker~~] for a seller, landlord, buyer or tenant in a real estate transaction.

[~~R~~] Q. Designated [~~brokerage~~] agency: the brokerage relationship established between the seller, landlord, buyer or tenant and a designated broker, including the duties, obligations and responsibilities of this relationship which shall [~~not~~] extend to the qualifying broker [~~nor~~] not to any other associate broker employed or engaged by that qualifying broker.

R. Distance Education: distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the instructor, teaching materials, and student are separated by either distance or time.

S. Dual agency: an express written agreement that modifies existing exclusive agency agreements to provide that the brokerage agrees to act as a facilitator in real estate transaction rather than as an exclusive agent for .either party to the transaction.

T. Dual agent: the brokerage in a dual agency relationship working as a facilitator in a single transaction for both a buyer client and a seller client who have existing exclusive agency agreements with the brokerage.

U. Employee: for the purposes of Section 61-29-2 C (1) of the real estate license law, a person employed by an owner or lessor of real property, or a person employed by the brokerage acting on behalf of the owner or lessor of real property. In determining whether a person is an employee, as opposed to an independent contractor, the commission shall consider the following indicia:

(1) does the employer withhold income tax from the person's wages, salary, or commission;

(2) does the employer pay a portion of the person's FICA tax;

(3) is the person covered by workers' compensation insurance;

(4) does the employer make unemployment insurance contributions on behalf of the person;

(5) does the employer consider the person an employee.

V. Errors and omissions insurance: a type of professional liability insurance that provides
insurance coverage to holders of active New Mexico real estate brokers licenses for errors and omissions made during the course of real estate transactions, subject to the coverages, limitations, and exclusions of the specific insurance policy or policies in place.

W. Exclusive agency: an express written agreement between a person and a brokerage wherein the brokerage agrees to exclusively represent as an agent the interests of the person in a real estate transaction. Such agreements include buyer agency, seller agency, designated agency, and subagency agreements.

X. Express written agreement: a listing agreement, a written agency or brokerage relationship agreement, an exclusive transaction broker agreement or purchase or lease agreement, or any written agreement signed by all parties to a real estate transaction.

Y. Facilitator: the role of a brokerage in either a dual agency relationship or a transaction brokerage relationship

in which the exclusive relationships between a seller or landlord client or buyer or tenant client are modified so that the brokerage impartially facilitates the transaction.

Z. Foreign broker: a real estate brokerage licensed by a jurisdiction other than New Mexico engaged in real estate-related activities in New Mexico.

AA. Inactive broker: a New Mexico licensed qualifying broker or associate broker who has returned their license to the real estate commission because they are not currently affiliated with a real estate brokerage in New Mexico.

BB. In house transaction: a transaction that occurs under the supervision of one qualifying broker in the same brokerage.

CC. Sponsor: an organization or entity that offers or administrates courses in real estate practice and law, continuing education, professional designations, or accreditations for real estate brokers.

[~~CC~~] DD. Licensee: any person holding a New Mexico real estate license.

[~~DD~~] EE. Land title trust account: a pooled interest-bearing account subject to the land title trust fund act.

[~~EE~~] FF. Mandatory course: the course the commission requires brokers, except for those brokers exempted from continuing education requirements pursuant to Section 61-29-4.1 of the real estate license law, to take during each license renewal cycle.

[~~FF~~] GG. Party to the transaction: a client or customer or any other person who utilizes real estate related services subject to jurisdiction of the commission, not including a person who acquires an interest as security for an obligation.

[~~GG~~] HH. Person: any natural person, corporation, business trust, estate, trust, partnership, association, joint venture, governmental entity or other legal entity.

II. Post-licensing course: the thirty (30) hour commission approved course for associate brokers in their first three year licensing cycle.

[~~HH~~] JJ. Principal: any person who authorizes or employs another to do certain acts on behalf of that person.

[~~II~~] KK. Property management: includes the showing, renting and leasing of real property, the collection and disbursement of funds on behalf of other persons, the supervision of employees as specified in the management agreement, the supervision of maintenance and repair work, handling of tenant relations, and/or preparation of financial reports. In the course of listing and marketing properties for sale, repairs and maintenance incident to the sale and authorized by the owner, shall not be considered property management.

[~~JJ~~] LL. Property management trust account: a trust account containing money of others derived from the management of leased or rental properties.

[~~KK~~] MM. Property manager: a broker (with the exception of those mentioned in Section 61-29-2(C), NMSA 1978) who, for a fee, salary, commission or other valuable consideration, is engaged in managing property for others.

[~~LL~~] NN. Qualifying broker: a broker who has qualified an individual proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico.

[~~MM~~] OO. Referral: the communication by one broker or brokerage to another broker or brokerage of the identity of a potential buyer/tenant or seller/lessor of real property available for sale, lease, rent or exchange.

[~~NN~~] PP. Responsible person: the qualifying broker or associate broker for whom an unlicensed assistant works. If an unlicensed assistant works for more than one broker, each broker for whom the unlicensed assistant works is a responsible person. Each responsible person will be subject to the provisions of Section 61-29-12A(7) NMSA 1978.

[~~OO~~] QQ. Scope of authority: the range of authority granted by the principal to act on behalf of that principal.

[~~PP~~] RR. Short-term rental: with the exception of hotels and motels, the rental of real property for a period of less than thirty (30) days.

[~~QQ~~] SS. Special trust account: a trust account bearing interest payable to a named party to the transaction.

[~~RR~~] TT. Subagent: an agent of the agent, authorized to act for the agent in performing functions undertaken by the agent for his principal.

[~~SS~~] UU. Transaction: any brokerage relationship, sale, lease, rental, option or exchange subject to the jurisdiction of the commission.

[~~TT~~] VV. Transaction broker: [~~any~~] the non-fiduciary relationship created by 61-29-2 A 14 NMSA 1978, wherein a broker or brokerage [~~that~~] provides real estate services without entering into an agency relationship.

[~~UU~~] WW. Trust account: an account established by the qualifying broker for the purpose of holding money of others received by the qualifying broker in a transaction.

[~~VV~~] XX. Unlicensed assistant: a person who:

(1) does not hold [~~a~~] an active New Mexico real estate license, and is subject to the jurisdiction of the commission and;

(2) works under the supervision of a qualifying broker[~~, associate broker~~] or associate broker;

(3) performs only those routine clerical, secretarial, administrative or bookkeeping activities defined in Part 21 of the real estate commission rules which do not require a New Mexico real estate license.

[16.61.1.7 NMAC - Rp, 16.61.1.7 NMAC, 1-1-2006; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.5 NMAC Section 9, effective 12-31-2008.

16.61.5.9 TERMS OF COVERAGE: The group policy shall provide, at a minimum, the following terms of coverage:

A. coverage of all acts for which a real estate license is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage;

B. [~~an annual premium not to exceed $200~~] an annual premium not to exceed the amount set by statute 61-29-4.2B NMSA 1978;

C. that the coverage cannot be cancelled by the insurance carrier except for non-payment of the premium or in the event a broker becomes inactive or has their license revoked or an applicant is denied a license;

D. pro-ration of premiums for coverage which is purchased during the course of the calendar year but with no provision for refunds of unused premiums;

E. not less than $100,000 coverage for each licensed individual and entity per covered claim regardless of the number of brokers or entities to which a settlement or claim may apply;

F. an aggregate limit of $500,000 per licensed individual or entity;

G. a deductible amount for each occurrence of not more than $1,000 per claim and no deductible for legal expenses and defense;

H. the obligation of the insurance carrier to defend all covered claims;

I. coverage of a broker's use of lock boxes;

J. the ability of a broker, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the insurance provider as may be determined by the provider;

K. that coverage is individual and license specific and will cover the associate broker regardless of changes in qualifying broker;

L. an extended reporting

period of not less than 365 days;

M. a conformity endorsement allowing a New Mexico resident broker to meet errors and omissions insurance requirements for an active license in another group mandated state without the need to purchase separate coverage in that state.

[16.61.5.9 NMAC - N, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.7 NMAC Section 8, effective 12-31-2008.

16.61.7.8 REQUIREMENTS: All persons applying for or renewing a New Mexico real estate broker's license [~~on or after January 1, 2007, must submit to a criminal background check as a condition of licensure and must submit documentation of having submitted to such a check from a source approved by the commission.~~] or upgrading an associate brokers license to a qualifying brokers license must submit along with their application an arrest record report from the New Mexico department of public safety or, in the case of a non-resident applicant, an arrest record from the equivalent agency in their state of residence, that has been prepared no longer than six (6) months before the date of the reports submittal with the license application. License applicants residing in states that do not make arrest record reports available must, in lieu of the arrest record report, provide written documentation from the appropriate agency in their state of residence that such reports are not available.

[16.61.7.8 NMAC - N, 01/01/07; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.9 NMAC Section 8, effective 12-31-2008.

16.61.9.8 REQUIREMENTS: Whenever a [~~licensee is no longer transacting business at the office designated on that licensee's license, or at a temporary or field office associated with that office,~~] broker is no longer transacting business under the trade name and from the address registered with the commission the qualifying broker, or his properly designated "broker in charge", shall [~~immediately~~] return the license to the commission within forty-eight (48) hours. The license shall be inactivated and all real estate activity on the part of the licensee shall cease. [~~The license of any active broker or salesperson who fails to obtain errors and omissions insurance coverage as provided by commission rule or to provide proof of continuous coverage, either through the group carrier or in the case of equivalent coverage directly to the commission, shall be placed on inactive status until documentation of such coverage is received in the commission office.~~]

A. When a [~~licensee~~] broker requests that their license be placed on inactive status, the qualifying broker or broker in charge shall within forty-eight (48) hours return the license to the commission. The license shall be inactivated and all real estate activity on the part of the [~~licensee~~] broker shall cease.

B. When a qualifying broker returns their license to the commission for inactivation, they shall within forty-eight (48) hours either mail or deliver to the commission all licenses issued under that license. If the brokerage is to continue operation, an application for a new qualifying broker, along with transfer applications and appropriate fees for each license, shall also be included.

C. Inactivation of a license shall take place at the time a license is received and stamped at the commission office [~~or upon receipt of written notification to the commission by the qualifying broker or broker in charge of termination, whichever is earlier~~]. In the event that a license is lost, or otherwise unavailable for delivery by the qualifying broker to the commission office, inactivation of the license will take place at the time the commission receives and stamps a written notification from the qualifying broker that the associate broker longer is no longer affiliated with the brokerage.

D. The voluntary inactivation of a license will not [~~prohibit~~] prevent the commission from [~~revoking or suspending the rights to existing or future licensing~~] taking disciplinary action against that broker as provided in Section 61-29-1 through 61-29-29, NMSA, 1978.

E. [~~An inactive licensee must comply with commission rules and regulations including but not limited to those pertaining to disclosure that they are a real estate licensee, payment of renewal and transfer fees, and completion of continuing education.~~] Brokers whose licenses are inactive are required to fulfill the following requirements of licensure.

(1) The payment of triennial renewal fees.

(2) Submission of an arrest record report at the time of renewal.

(3) Completion of continuing education requirements, except in the case of exemption from continuing education by virtue of being sixty-five (65) years of age and having had twenty (20) years of continuous licensure.

(4) During the course of advertising personally owned property for sale, lease, or auction, disclosure that they are a licensed broker.

F. Brokers whose licenses are on inactive status are not required to have an errors and omissions insurance policy in effect while on inactive status. Inactive brokers are required to produce a certificate of current errors and omissions insurance as a condition of license activation.

[~~F~~]G. If a license has been placed in inactive status and is not renewed at the time of next renewal, that license [~~may not be subsequently renewed except as provided in Section 61-29-11, C, NMSA, 1978~~] shall expire.

[8-15-97; 16.61.9.8 NMAC - Rn & A, 16 NMAC 61.9.8, 1-1-2002; A, 12-31-08]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.11 NMAC Section 8, effective 12-31-2008.

16.61.11.8 REQUIREMENTS: Every real estate license shall expire every three years on the last day of the month following the broker's birth month, and shall be renewed on or before that date. Renewal of a license is the sole responsibility of the broker. A broker whose license has expired may reinstate their license without reexamination up to one year after expiration by paying a reinstatement fee three times the regular license renewal fee. In addition to paying a reinstatement fee, the broker will be required as a condition of reinstatement to provide documentation of the completion of 30 hours of commission-approved continuing education courses. Application for renewal shall be on the renewal form prescribed by the commission. Renewal forms will be mailed to brokers at the last mailing address on file at the commission. The commission assumes no responsibility for renewal applications not received by the broker for any reason. It shall be the broker's responsibility to make a request for a renewal form in the event the form has not been received by the broker [~~thirty (30) days prior to the renewal deadline~~]. The license(s) of any active broker who fails to submit with the license renewal application a [~~certificate certifying~~] certification of current errors and omissions insurance coverage [~~as provided by commission rule~~] and an arrest record check not more than six (6) months old shall not be renewed until all documentation [~~of such insurance coverage~~] is received in the commission office.

[8-15-97; R 1-1-2000; 16.61.11.8 NMAC -

Rn & A, 16 NMAC 61.11.8, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.12 NMAC Section 8, effective 12-31-2008.

16.61.12.8 DISCIPLINARY ACTIONS: Violation of any provision of the real estate license law or commission rules may be cause for disciplinary action against any person who engages in the business or acts in the capacity of a real estate broker in New Mexico with or without a New Mexico real estate license, up to and including license suspension or revocation if the person is licensed in New Mexico, and other penalties as provided by law, commission rules, or policies, in the case of an unlicensed person. [~~Such person~~] A person found by the commission to be engaging in unlicensed real estate activity has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the [~~New Mexico real estate~~] commission and is subject to all penalties and remedies available for a violation of any provision of the real estate license law Chapter 61, Article 29 NMSA 1978 and the commission rules, Title 16 Chapter 61 NMAC. Nothing herein contained shall be deemed to be a restriction on any other penalty or provision provided by law.

[16.61.12.8 NMAC - Rp, 16 NMAC 61.12.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.13 NMAC Sections 2, 8 and 9, effective 12-31-2008.

16.61.13.2 SCOPE: The provisions in Part 13 of Chapter 61 apply to all [~~licensees~~] brokers intending to renew or reactivate their New Mexico broker license.

[1-1-2000; 16.61.13.2 NMAC - Rn, 16 NMAC 61.13.2, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

16.61.13.8 REQUIREMENTS: The only exception to this part is [~~that specified in Section 61-29-4.1, NMSA 1978~~] for brokers exempted from continuing education by virtue of being sixty-five (65) years of age with twenty (20) years continuous licensure.

A. All active and inactive associate brokers and qualifying brokers shall successfully complete thirty (30) credit hours of continuing education in courses approved by the commission during each licensing cycle.

[~~B. Associate brokers in their first licensing cycle who were licensed as associate brokers for the first time on or after January 1, 2006, as a result of having passed the broker's examination, shall successfully complete 30 hours of courses in subject matter areas prescribed by the commission for new brokers, including the approved eight (8) hour real estate commission mandatory course. At least 10 hours must be completed by the end of year one (1), a total of 20 hours must be completed by the end of year two (2), and a total of 30 hours must be completed by the end of year three (3). Associate brokers in their first licensing cycle shall submit course sponsors' verification of successful completion of course work. Associate brokers in their first licensing cycle will be required to pass an examination as prescribed by the commission as a condition of license renewal at the end of their third year of licensure.~~]

[~~C~~] B. All associate brokers and qualifying brokers shall successfully complete the approved eight (8) credit hour real estate commission mandatory course during each licensing cycle. Of the remaining twenty-two (22) credit hours, ten (10) credit hours may be credited toward the continuing education requirement from approved training courses. At least twelve (12) credit hours must be taken from approved education courses; however, all twenty-two (22) credit hours may be taken from the list of commission-approved education courses.

[~~D~~] C. Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education if the course is being used to upgrade from associate broker to qualifying broker. The commission approved thirty (30) hour post-licensing course may count for up to ten (10) credit hours toward continuing education.

[~~E~~] D. No commission approved continuing education course will be granted more than ten (10) credit hours of continuing education credit.

[~~F~~] E. Continuing education credit hours cannot be carried forward to the next licensing cycle.

[~~G~~] F. [~~Licensees~~] Brokers may receive four (4) approved education course credit hours during each licensing cycle for attending commission meetings, rules hearings, and disciplinary hearings.

[~~H~~] G. Approved instructors may [~~apply~~] use up to ten (10) credit hours during each three-year licensing cycle toward fulfillment of their own continuing education requirements for teaching commission approved courses.

[1-1-2000; 16.61.13.8 NMAC - Rn & A, 16 NMAC 61.13.8, 1-1-2002; A, 1-1-2006; A, 1-1-2007; A, 12-31-2008]

16.61.13.9 VERIFICATION OF COMPLETION OF COURSE WORK: At the time of license renewal, associate brokers and qualifying brokers shall submit to the real estate commission on commission approved forms, sponsors' verification of completion of continuing education course work. [~~The exception is for those associate brokers in their first licensing cycle, as defined in Subsection B of 16.61.31.8 NMAC, who shall submit verification of courses to the real estate commission at the three annual intervals prescribed by the commission.~~]

[1-1-2000; 16.61.13.9 NMAC - Rn, 16 NMAC 61.13.9, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.14 NMAC Sections 17 and 19, effective 12-31-2008.

16.61.14.17 EXPENDITURES: Any funds not expended in the implementation of a contract for education or research shall be returned to the commission within thirty (30) days of the termination date of the contract or at such other time as the commission [~~may require~~] approves.

[16.61.14.17 NMAC - N, 01/01/07; A, 12-31-2008]

16.61.14.19 VIOLATIONS: Any violation of the provisions of this part, any falsification or misrepresentation in a proposal for a contract for education and research, or violation of any written agreement entered into with the commission under this part may result in a termination of the contract and the requirement that [~~any~~] all funds paid by the commission be returned. Any provider under a contract for education and research found to have not properly accounted for or improperly expended [~~any~~] all funds shall repay said funds plus interest at 6 percent per annum to the commission and said recipient shall be ineligible to enter into any contract for education and research with the commission until said recipient first repays the fund plus interest. Should the commission allege any violation under this rule, it shall provide the respondent with a formal hearing under the provisions of the Uniform Licensing Act.

[16.61.14.19 NMAC - N, 01/01/07; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.15 NMAC Sections 9, 10, 11 and 12, effective 12-31-2008.

16.61.15.9 APPROVAL OF EDUCATION PROGRAMS:

A. Applications for sponsor, instructor, and course approvals shall be accompanied by the fee(s), if assessed by the commission, specified in16.61.2.8 NMAC of the commission rules.

B. Review of Courses. The ESC shall determine if a course meets commission guidelines as to course content and has significant content relating directly to the real estate business. The course must have an acceptable structure and method for measurement of student proficiency, and to categorize the course into either an approved "education" course or an approved "training" course.

(1) An approved education course shall consist of [~~courses in selling, leasing or managing residential, commercial and industrial property; basic~~] a course offered by a commission approved sponsor in real estate law and practice; real estate financing including mortgages and other financing techniques; material specific to the regulatory, technical and ethical practice of real estate; and all state and federal laws including but not limited to fair housing, the Americans with Disabilities Act (ADA), and lead-based paint disclosure.

(2) With the exception of courses taken in states with which New Mexico has a written license recognition agreement; non-acceptable offerings shall include courses taken in fulfillment of another state's continuing education requirements in mechanical office and business skills such as typing; speed reading; memory improvement; language report writing; offerings concerning physical well-being or personal development such as personal motivation; stress management; time management; dress-for-success; or similar offerings.

[~~(2)~~] (3) An approved training course [~~shall consist of~~] offered by a New Mexico real estate commission approved sponsor may be recommended for approval to the commission by the education steering committee for offerings in personal and property protection for the broker and clients; offerings in using the computer, the internet, business calculators, and other technologies to enhance the broker's service to the public; offerings concerning professional development, customer relations skills, sales promotion including salesmanship, negotiation, marketing techniques, servicing the client, or similar offerings.

[~~(3) Non-acceptable offerings shall include courses in mechanical office and business skills such as typing, speed reading, memory improvement, language report writing, offerings concerning physical well-being or personal development such as personal motivation, stress management, time management, dress for success, or similar offerings~~.]

C. The ESC shall review instructor candidates:

(1) to determine the candidate's knowledge of the subject matter;

(2) to determine the candidate's ability to communicate his/her knowledge to students;

(3) to determine if the candidate uses appropriate teaching delivery skills;

(4) to determine if the candidate is honest, truthful, reputable, and competent.

D. The ESC shall review sponsor applications: to determine if the sponsor is qualified and credible.

E. Agenda and procedures for approval of sponsors, instructors, and courses.

(1) The ESC shall schedule no more than eight presentations related to applications for instructor, sponsor, or course approvals during any one meeting.

(2) Applications must be received by the education administrator in the commission office at least 30 days prior to a scheduled ESC meeting.

[~~F. One-on-one approvals.~~

~~(1) One-on-one credit - the ESC may recommend approval of a continuing education single course offering for 12 months for a course not otherwise approved for continuing education credit. Education and/or training credit may be requested for one-on-one approved courses.~~

~~(a) The broker must complete and submit to the commission the approved one-on-one application form, the certificate of completion (if any), a cover letter giving details of the course, and all applicable fees within 30 days of completing the course.~~

~~(b) The application form must include the applicant's name, sponsor's name, course title, date and place of course offering, number of credit hours, outline of the course, course category (education or training), and name and credentials of the instructor or speaker.~~

~~(c) Credit hours will apply only to the renewal cycle during which the course was presented and cannot be carried over into a subsequent renewal cycle.~~

~~(d) The ESC will evaluate the application and supporting documentation and make a recommendation to the commission. If the broker is able to satisfactorily demonstrate that the course will likely improve the broker's ability to better protect or serve the public and increase the broker's competence, the commission may grant the individual licensee hour for hour continuing education credit for the course to a maximum of ten credit hours per course. Written notice of commission approval or denial will be sent to the broker applicant.~~

~~(2) Course one-on-one credit - if a course is to be taught only one time and in one New Mexico location, and if the course has been approved for continuing education credit in a minimum of three other states, the sponsor may be granted course credit.~~

~~(a) The course sponsor shall complete and submit to the commission the approved one-on-one application form, evidence that the course is certified in at least three other states, and all applicable fees at least 60 days prior to the presentation of the course.~~

~~(b) The sponsor of the course must be able to satisfactorily demonstrate that the course meets the same standards required for approval of other New Mexico courses and instructors.~~]

[16.61.15.9 NMAC - N, 1-2007; A, 12-31-2008]

16.61.15.10 APPROVAL OF SPONSORS:

A. All sponsors wishing to offer commission approved courses for credit must be approved by the commission prior to accepting students.

B. Educational institutions, proprietary schools, professional organizations or businesses wishing to become commission approved sponsors must submit a completed sponsor application form with supporting documentation as required by the commission.

C. The commission will maintain a list of approved sponsors.

D. An approved sponsor shall comply with the following requirements:

(1) conduct all courses in accordance with commission rules and education policies, and in accordance with approved course content;

(2) prominently display the current certificate of sponsorship in the main office of the sponsor as registered with the commission;

(3) prepare and provide to each student who successfully completes a pre-licensing or continuing education course, a course completion certificate showing the student name, the course name, the course number, the credit hours earned and whether the course is in the education or training category;

(a) certify no candidate as successfully completing a pre-licensing real estate course unless the student has attended at least 75% of the classroom instruction and has passed a written examination at the conclusion of the course;

(b) certify no broker as successfully completing the mandatory course unless the broker has attended [~~at least 90% of the classroom instruction and, on or after January 1, 2007, passed a written examination at the conclusion of the course~~] each credit hour;

(c) certify no broker as successfully completing an approved continuing education course unless the broker has attended [~~at least 90% of the classroom instruction~~] each credit hour;

(4) maintain current, complete, and accurate student records; these records shall include, but not be limited to, a record of payments made, a record of attendance, and a record of course work completed; records shall be maintained for a period of three years;

(5) permit the commission or its representative access to classes being conducted, and make available to the commission, upon request, all information pertaining to the activities of the sponsor;

(6) advertise at all times in a manner free from misrepresentation, deception or fraud; all course advertising must include the name of the commission-approved sponsor, and must specify whether the course is in the education or training category;

(7) in the event a sponsor [~~ceases operations~~] determines that it intends to cease sponsoring real estate classes it shall inform the commission in writing not less than 30 days prior to cessation. The sponsor shall also inform the commission in writing of the plan for reimbursement and disposition of student fees for courses not completed by the date operations cease. The sponsor shall forward all student records to the commission for proper disposition; if the sponsor ceases operations while students are still enrolled who have not completed their program of study, the sponsor shall submit to the commission within thirty (30) days a list of students enrolled at the time of closure, the amount of tuition paid, the status of course work in progress, and all other student records;

(8) advise the commission within 30 days of changes in ownership, directorship, financial status, location or other pertinent information, and reapply for sponsorship in the event of change of majority ownership;

(9) at the end of each course, the sponsor shall collect from each student an evaluation that evaluates adherence to course content, the effectiveness of the instructor, and other prescribed criteria; the evaluation forms shall be [~~mailed to the commission within 10 days of the last class~~] maintained by the sponsor for not less than three years;

(10) renew sponsorship approval every three (3) years by submitting a sponsor renewal form to the commission;

(11) shall meet the requirements of the Americans with Disabilities Act and all other local, state and federal laws.

E. An affiliate of the National Association of REALTORS or other organizations that routinely and ordinarily offer courses in real estate practice and law, continuing education, or professional designations or accreditations for real estate brokers, shall have the right to apply for sponsor status.

(1) An individual sponsor shall be allowed to submit for approval not more than four (4) individual classes per year for continuing education credit without the intention of having the course be on the list of approved courses, in addition to classes leading to a designation. These classes must be approved by the ESC and the commission prior to presentation.

(2) The sponsor shall be required to present the class for approval, and will be responsible for assuring that the program is presented as approved.

(3) Failure to assure that the class is delivered in accordance with the approved outline and materials, shall result in loss of sponsorship status and revocation of continuing education credit.

[~~E.~~] F. Failure to comply with this rule may result in the loss of sponsor approval. The commission may investigate any claim of violation of this rule pursuant to 16.61.36.8 NMAC of the commission rules.

[16.61.15.10 NMAC - Rp, 16.61.15.9 NMAC, 1-1-2007; A, 12-31-2008]

16.61.15.11 APPROVAL OF COURSES:

A. [~~Except as provided in Subsection F of 16.61.15.9 NMAC, one-on-one approvals,~~] All pre-licensing and continuing education courses must have been approved by the commission prior to the presentation of the course.

(1) [~~An~~] A full and complete application for approval of a new course must be submitted to the commission on the approved form with all applicable fees [~~no less than 30 days before the presentation by~~] before consideration of the course by the education steering committee (ESC). The application must be accompanied with all written materials to be used in the course, and a course outline in an electronic format specified by the commission. [~~The outline becomes the property of the commission.~~]

(2) [~~Nationally recognized professional real estate organizations such as NAR, NAREB, AARO, and IREM, that provide national professional designations such as GRI, CRB, CRS and CCIM, shall be automatically certified for education or training credit on an hour for hour basis.~~] The ESC shall determine whether hours earned in courses submitted for approval are granted credit for continuing education, and if the credit will be in the education or training category.

(a) Licensees taking these courses need only provide evidence to the commission of having completed such a course.

(b) A New Mexico sponsor is not required for these courses.

(3) [~~Unless otherwise specified, all courses approved for pre-licensing credit by the commission are eligible for credit from the date of course approval.~~] Commission approved pre-licensing courses may count for up to ten (10) credit hours toward continuing education if the course is being used to upgrade from associate broker to qualifying broker.

B. All courses shall be offered in accordance with established commission approved course content requirements. The minimum length of a course shall be one hour. [~~A credit hour is 50 minutes within a 60 minute period of time.~~]

C. The commission will maintain a [~~current~~] list of courses that have been approved for credit. [~~This list shall be available from the commission office and on the commission web site. All approved courses are subject to periodic review by the commission.~~]

[~~D. Courses submitted for approval shall have significant intellectual and/or practical content and shall meet the commission's charge of protecting the public and increasing the professional competence of the broker.~~

~~(1) Instructor materials shall include thorough, high quality, readable, carefully prepared materials, provided to participants prior to, or at the time of, the course.~~

~~(2) Workshops, seminars, or conferences offered for credit, except as otherwise provided in this part, must be offered by an approved sponsor. All educational activities (except for distance education) shall be presented in a suitable classroom setting.~~]

[~~(3)~~] D. If the course represents an update to a previously approved course, and new material becomes available, the instructor shall be responsible for updating the course and presenting the most current information. Significant changes to course outlines should be provided by the instructor to the commission's education administrator as they occur. If a course outline has not been updated within the last 3 years the ESC may, at its discretion, recommend to the commission that the course be removed from the list of approved courses.

[~~E. Distance Education: For purposes of this subsection, distance education courses are those in which the instruction does not take place in a traditional classroom setting but rather through~~

~~other media where teacher and student are separated by distance and/or time. Content of the courses shall consist primarily of courses in selling, leasing or managing residential, commercial and industrial property as well as courses on basic real estate law and practice.~~

~~(1) Courses using the ARELLO certification:~~

~~(a) only the delivery method will be certified by ARELLO; the subject matter of the course will be certified by the commission;~~

~~(b) education providers making application for certification based on ARELLO certification shall provide appropriate documentation that the ARELLO certification is in effect.~~

~~(2) Courses certified by the commission:~~

~~(a) the sponsor and materials, including outlines and testing materials, shall be approved by the commission;~~

~~(b) courses shall meet the course standards established in this part;~~

~~(c) courses shall have an instructor available to monitor progress and answer student questions during regularly posted hours; the sponsor must demonstrate a method for monitoring student progress, through live interaction, testing or some other method approved by the commission;~~

~~(d) the sponsor shall assure that technical assistance is available to students as needed;~~

~~(e) the sponsor must provide for secure and accurate documentation of student identity and achievement;~~

~~(f) the sponsor shall justify the classroom hour equivalency;~~

~~(g) the course must include testing administered by the sponsor or a disinterested third party; the testing shall be adequate to demonstrate understanding or knowledge of the subject matter; the sponsor must not alter the course test parameters; the test should be administered as approved by the commission;~~

~~(h) the commission reserves the right to consider alternative certification methods and/or procedures for non-ARELLO certified distance education courses.~~

E. Distance Education-Draft Rule: For purposes of this part, distance learning is education and training that takes place outside of the traditional classroom setting and in which other instructional media are used because the teacher and student are separated by distance or time. Distance education providers seeking real estate broker continuing education credit for their courses shall submit for ESC review and approval:

(1) course syllabi which clearly state the course objectives and explain the desired student competencies;

(2) paper copies of detailed course content materials that allow for the evaluation of the course's content, duration, accuracy, and timeliness without the necessity of going on line to evaluate the course;

(3) instructions for accessing, using, and testing the on line materials tailored to individuals or organizations, such as ESC members, who will be evaluating the courses rather than completing them for credit;

(4) reference materials appropriate to the course;

(5) when a series of courses is offered in a curriculum, evidence of sequential development and logical progression;

(6) description of the method, such as examinations and quizzes, by which student progress and mastery of the subject matter is measured, and for determining what is required for a student to successfully complete the course;

(7) description of the method by which student identity is verified;

(8) evidence that qualified individuals are involved in the design and planning of distance learning courses;

(9) the names, telephone numbers and email addresses of individuals, web sites, or other resources that students can contact for technical assistance and subject matter questions, and the hours and other conditions of availability of such individuals and resources;

(10) a description of the methodology used by the provider in determining the classroom hour equivalency of each distance education course;

(11) documentation that the course has met the distance education certification requirements of the association of real estate license law officials (ARELLO), the commission, or another entity qualified to grant such certifications;

(12) courses shall have a New Mexico approved instructor competent in the subject matter available to monitor progress and answer student questions during regularly posted hours; the sponsor must demonstrate a method for monitoring student progress, through live interaction, testing or some other method approved by the commission.

~~F. Failure to comply with this rule may result in the loss of course approval.]~~

[16.61.15.11 NMAC - Rp, 16.61.15.10 NMAC, 1-1-2007; A, 12-31-2008]

16.61.15.12 APPROVAL OF INSTRUCTORS:

A. All [~~instructors teaching real estate courses shall have been~~]individuals applying to teach courses for pre-licensing or continuing education credit shall be approved by the commission prior to teaching a course, except for [~~instructors teaching courses approved for one-on-one credit, or~~] instructors teaching courses leading to national professional designations at the discretion of the education steering committee.

(1) All instructor candidates must complete an application on the approved form with all applicable fees no less than 30 days before the presentation of a course.

(2) All instructor candidates shall complete a commission-approved instructor-training course within one year of being approved as an instructor and every three years thereafter. Instructors who fail to submit documentation of completion of the instructor-training course will not be re-certified.

(3) All instructor candidates must have high integrity and be honest, truthful, reputable and competent.

(4) Instructor candidates must [~~be prepared to~~] make a minimum 15-minute presentation to the ESC exhibiting their teaching skills and knowledge of the subject matter, and be prepared to answer questions:

(a) The presentation shall conform to the generally accepted principles of education as proposed by the real estate educators association (REEA).

(b) The ESC will make its recommendation to the commission to grant or deny instructor approval based on this presentation. If the application is denied, a written notice to the candidate will provide specific reasons and prescriptive measures for improvement.

B. Pre-licensing instructors.

(1) Candidates seeking approval to teach real estate law, real estate principles and practices, broker basics and brokerage office administration must have passed the New Mexico broker's examination with a minimum score of 84 within three years of having made application to the commission to become an instructor. Candidates seeking approval to teach the brokerage office administration course must have been previously approved to teach real estate law, real estate principles and practice and broker basics and have two years of experience as a qualifying broker in New Mexico or another licensing jurisdiction.

(2) Candidates shall complete an audit of each course they will be teaching and prepare teaching notes on the course of study. Candidates shall provide written documentation of having audited the class with the application for instructor approval.

C. Mandatory course instructors.

(1) Candidates seeking approval to teach the mandatory course must have passed the New Mexico [~~broker's~~] manda-

tory course examination with a minimum score of 84 within six months of having made application to the commission to teach the mandatory course.

(2) Candidates must be currently approved instructors in real estate law and real estate principles and practice or certified in three or more commission-approved education courses.

(3) Candidates must attend a seminar on how to present the mandatory course, and must attend a periodic update of the course offered by the commission or its mandatory course contractor.

(4) Candidates must be prepared to make a minimum 60-minute presentation to the ESC and answer questions. This presentation shall conform to the requirements set forth by the ESC.

D. [~~Associate broker first licensing cycle course instructors.~~] Instructors desiring to teach the brokerage office administration course shall have a minimum level of experience including at least two years experience as a qualifying broker in a capacity supervising associate brokers, salespersons, or exempt employees in a real estate endeavor.

[~~(1) Instructor candidates seeking approval to teach courses for associate brokers in their first licensing cycle shall have appropriate teaching skills and be able to provide to the ESC instructor evaluations from students and sponsors indicating a superior level of teaching skills.~~

~~(2) Additionally, instructor candidates in this category shall comply with the other requirements set forth in 16.61.15.12 NMAC, Approval of Instructors.~~]

E. Continuing education course instructors.

(1) Candidates seeking commission approval to teach approved continuing education courses shall comply with the requirements set forth in 16.61.15.12 NMAC, Approval of Instructors.

(2) Approved continuing education instructors shall comply with the following requirements:

(a) conduct all classes in accordance with commission rules and education policies;

(b) ensure that all instruction is free from misrepresentation;

(c) instruct in accordance with commission approved course content requirements;

(d) allow access to any approved class to any duly appointed representative of the commission;

(e) certify to the sponsor a true and correct record of student attendance.

F. Instructor approvals expire [~~on December 31 of each year every three years~~] at the same time as the instructor's license expiration. If an instructor is not a real estate broker, then the expiration will be three years from the date of initial approval.

(1) Instructors shall apply for recertification every three years on the commission approved form. As part of the recertification process, each instructor shall be required to appear before the ESC. Instructors shall complete a commission approved instructor training course within one year of being approved to teach prelicensing and continuing education courses.

(2) Failure to submit documentation of completion of the instructor-training course will result in the instructor being decertified.

(3) Instructors shall have taught in the preceding year a minimum of one class in each course for which approval is sought.

G. Failure to comply with this part may result in the loss of instructor approval. The commission may investigate any claim of instructor impropriety pursuant to 16.61.36.8 NMAC of the commission rules.

[16.61.15.12 NMAC - Rp, 16.61.15.11 NMAC, 1-1-2007; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.16 NMAC Section 9, effective 12-31-2008.

16.61.16.9 RESPONSIBILITIES: The qualifying broker shall, in addition to all other requirements imposed by law, comply with the following:

A. conduct the real estate brokerage business under the trade name and from the brokerage address or addresses registered with the commission;

B. prominently display in the brokerage office, the qualifying broker's own license and the licenses of all other affiliated associate brokers conducting real estate brokerage business from the brokerage office [~~at the address as registered with the commission~~];

C. have in the brokerage office and available to all affiliated associate brokers and [~~co-qualifying~~] qualifying brokers a current copy of the state of the New Mexico real estate license law and rules manual;

D. supervise all real estate related activities to include advertising of real estate or real estate services conducted on behalf of others by associate brokers affiliated with the brokerage and execute and maintain current written employment or independent contractor agreements with them; such agreements should specify the relationship and [~~mutual~~] responsibilities of the associate broker [~~to~~] and the qualifying broker [~~and the brokerage~~], and the scope of authority of the associate broker to act on behalf of the brokerage;

E. maintain full and complete records wherein the qualifying broker and affiliated associate broker(s) are engaged on behalf of others, or on their own behalf, in real estate related matters processed through the brokerage;

(1) such records shall include but are not limited to a record and receipt of all deposits to a title company trust account, purchases, offers to purchase, counter offers, sales, lead-based paint disclosures and other disclosures required by law, seller's disclosure statements if provided by the seller, options, leases, rentals, letters of intent, brokerage relationship agreements and disclosures, and current, expired, and cancelled listings;

(2) the names of all principals or parties to the transaction;

(3) clear and correct dates of transactions;

(4) the names of persons to whom compensation was paid;

(5) the required records shall be available to the commission or any duly authorized commission representative at the place of business of the qualifying broker or at the commission office; all such records whether in paper or electronic format shall be retained for a period not less than three (3) years. In the case of a property manager, all records shall be retained for the full term of any agreement and for three (3) years from the close of the transaction;

F. deposit all money received on behalf of others in the proper trust account as soon after receipt as is practicably possible after securing signatures of all parties to the transaction;

G. receive and disburse all commissions, referral fees, and/or other considerations to [~~all associate brokers~~] any associate broker affiliated with the qualifying broker or any other entity entitled by law to receive same, including to [~~partnerships, corporations, or limited liability companies (llc's)~~] a partnership, corporation, or limited liability company (llc) wholly owned by an associate [~~brokers and their spouses~~] broker and their spouse, or authorize and direct the disbursement thereof, and maintain complete records thereof; such [~~partnerships, corporations, or llc's are not~~] partnership, corporation, or llc shall not be required to have a qualifying broker for purposes of this sub-part;

H. assure that when the brokerage cooperates with or makes a referral to, or receives a referral from any broker, sign a transaction specific written co-brokerage or referral agreement;

[~~H~~] I. not permit the use of the qualifying broker's license to enable an affiliated associate broker to establish and carry on transactions outside the knowledge

and supervision of the qualifying broker;

[~~I~~] J. in the event actual supervision by the qualifying broker is not possible for a time exceeding seven (7) consecutive days, including but not limited to [~~in~~] circumstances in which supervision of affiliated associate brokers is not possible because the qualifying broker [~~either resides in another state, or~~] is consistently and regularly absent from the office designate a broker in charge and inform the commission in writing of the designation; during this period of time the broker in charge shall assume all of the responsibilities of the qualifying broker for the brokerage;

[~~J~~] K. upon termination or discharge of an associate broker return the associate broker's license to the commission within forty-eight (48) hours; although the license may be delivered to the commission by an associate broker, the responsibility for the delivery of the license to the commission remains that of the qualifying broker;

[~~K~~] L. if employed as qualifying broker for others, have a written agreement of such employment maintained in the office of the brokerage;

[~~L~~] M. ensure that each qualifying broker and associate broker affiliated with the brokerage obtain and maintain a current errors and omissions insurance policy as provided in NMSA 1978 Section 61-29-4.2 of the real estate license law and 16.61.5 NMAC of the commission rules;

[~~M~~] N. successfully complete as a condition of license renewal a commission-approved minimum four (4) hour qualifying broker refresher course[~~every three years~~];

[16.61.16.9 NMAC - Rp, 16 NMAC 61.16.9, 1-1-2002; A, 01-01-2004; A, 1-1-2006; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.17 NMAC Section 9, effective 12-31-2008.

16.61.17.9 RESPONSIBILITIES: [~~The associate broker, in addition to all other requirements imposed by law, shall:~~

~~A. not engage in any real estate activities for others for which a real estate license is required outside the knowledge and supervision of their qualifying broker or broker in charge;~~

~~B. not receive any commission or fees related to real estate activities for which a license is required from anyone other than their qualifying broker or broker in charge;~~

~~C. conduct all real estate related business for others in the trade name of the brokerage as registered with the commission;~~

~~D. remit all monies of others, including checks and promissory notes, related to transactions to the qualifying broker or broker in charge as soon after receipt as is practicably possible after securing signatures of all parties to the transaction;~~

~~E. maintain files on all transactions in the office of the brokerage.~~] An associate broker shall:

A. complete in the first three year licensing cycle, the commission approved thirty (30) hour post-licensing course;

B. be affiliated with only one qualifying broker at a time;

C. not engage in any real estate activity for any other qualifying broker other than the qualifying broker with whom he/she is affiliated;

D. not engage in any real estate activities for himself/herself outside the knowledge of the qualifying broker with whom he/she is affiliated;

E. not engage in any real estate activity under a trade name(s) other than the trade name(s) of the qualifying broker with whom he/she is affiliated;

F. not receive any commissions or fees for real estate activities from anyone other than the qualifying broker with whom he/she is affiliated, or persons authorized in writing by the qualifying broker to disburse such commissions or fees;

G. when advertising real estate or real estate services for others, include in the advertising the trade name and telephone number as registered with the commission of the qualifying broker with whom he/she is affiliated;

H. remit all funds received from others related to real estate transactions to the qualifying broker or their designee as soon as possible after receipt of those funds, and after securing signatures of all parties to the transaction;

I. maintain all files for transactions performed under the auspices of the qualifying broker with whom he/she is affiliated at the brokerage address as registered with the commission.

[1-1-2000, A, 2-14-2000; 16.61.17.9 NMAC - Rn, 16 NMAC 61.17.9, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.23 NMAC Sections 8 and 10, effective 12-31-2008.

16.61.23.8 DESCRIPTION AND ESTABLISHMENT OF ACCOUNTS:

A. A qualifying broker who receives money belonging to others related to a real estate transaction wherein the qualifying broker is involved shall deposit same only in a bank, savings and loan institution, or title company authorized to do business in the state of New Mexico or with a cooperating New Mexico licensed broker also involved in the transaction.

B. All trust accounts in banks and savings and loan institutions must be designated on the institution's records as "trust account." At a minimum, the words "trust account" and the trade name of the brokerage as registered with the commission shall appear on all checks, [~~and~~] deposit slips and other bank documents related to the trust account.

C. A qualifying broker shall have only the following types of accounts and they shall be used only for the purposes stated.

(1) Trust account. Property management funds may be placed in the trust account only if a qualifying broker manages no more than five (5) individual rental units in this account. Should the qualifying broker manage six (6) or more individual rental units all management related monies shall be removed from the trust account and placed in the property management trust account (see Property Management Part 24). This type of trust account shall not be interest bearing.

(2) Special trust account. In the event the principals agree in writing that an interest bearing special trust account is to be established, it shall be done as follows: A written trust agreement shall be prepared stating as a minimum the following:

(a) the qualifying broker shall be named as sole trustee;

(b) name of the bank or savings and loan wherein the funds are to be deposited;

(c) the amount of interest to be paid on the funds and to whom the interest shall accrue;

(d) the final disposition of principal and interest upon closing, termination or default by either party to the transaction; and

(e) the signatures of all parties to the transaction and the qualifying broker as trustee.

(3) Custodial account. Monies designated to be deposited in a custodial

account shall first be placed in a trust account of the qualifying broker and then may be transferred to the custodial account of the owner. Custodial accounts shall not contain any monies other than those belonging to the owner of the custodial account. Custodial accounts may be interest bearing; however, the interest shall be paid only to the owner or his designee. The qualifying broker shall have on file a written agreement signed by all principals as to the establishment and operational details of each custodial account.
[8-15-97; Rn, 16.61.23.8.3.3, 1-1-2000, A, 1-1-2000; 16.61.23.8 NMAC - Rn & A, 16 NMAC 61.23.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

16.61.23.10 DEPOSITS AND DISBURSEMENTS:

A. Wrongful deposits. The following deposit actions by the qualifying broker or the qualifying broker's designee involving any trust account shall be improper.

(1) Depositing a qualifying broker's own funds into a trust account without specific prior approval of the commission except the minimum balance as required in writing by a bank or savings and loan institution.

(2) Depositing any funds in any trust account which are not directly related to a real estate transaction wherein the qualifying broker is involved.

(3) Depositing funds of others in an account other than a trust account.

(4) Depositing funds received on behalf of others directly into a custodial account without first depositing the funds in a trust account.

B. Wrongful disbursements. The following actions by the qualifying broker or the qualifying broker's designee shall be improper:

(1) disbursing trust funds for the personal use of the qualifying broker or the qualifying broker's designee;

(2) disbursing commissions from any trust account to any entity other than the qualifying broker; commission splits shall not be made directly from any trust account;

(3) disbursing trust funds from any trust account prior to the complete closing of the related transaction without written consent and signatures of all parties to the transaction, except upon court order; this does not prevent the qualifying broker from transferring trust account funds to another commission approved trust account or title company;

(4) disbursing funds from any trust account in excess of the amount in the trust account;

(5) disbursement of trust account overages can be made only in accordance with the Unclaimed Property Act and after written notification to the commission.
[N, 1-1-2000; 16.61.23.10 NMAC - Rn, 16 NMAC 61.23.10, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.24 NMAC Sections 8 and 16, effective 12-31-2008.

16.61.24.8 PROPERTY MANAGEMENT TRUST ACCOUNT:

A. When maintaining six (6) or more individual rental units, a property management trust account shall be established by the qualifying broker to receive and hold funds for the benefit of his/her clients. The account shall indicate on the checks, deposit slips and bank records that the account is a "property management trust account." Records of this account must be kept under the qualifying broker's control as set forth herein.

B. All funds received by the qualifying broker acting as property manager shall be deposited into the property management trust account prior to any disbursements. Once deposited, the qualifying broker may then disburse funds as specified in the management agreement. Security and/or deposits from tenants shall be placed and held in the property management trust account, except as stated below. However, if agreed upon in the written rental or lease agreement between the property owners and tenants, security and/or damage deposits only may be directed or disbursed to the property owners without first being deposited to the property management trust account and the qualifying broker shall not be held responsible for such deposits.

C. A qualifying broker may have a custodial account in the owner's name; however, all funds going into the account must first pass through the property management trust account.

D. Commingling of funds is not permitted. No funds may be deposited in the property management trust account that are not received in connection with a client's rental account, except for funds deposited by the qualifying broker to the property management trust account for the purpose of maintaining a minimum balance required in writing by the bank or savings and loan institution. In addition, the qualifying broker may deposit non trust funds into the property management trust account for the purpose of paying fees charged for credit card transactions.

E. When the property management trust account contains money from the rental or lease of more than one piece of property, separate accounting records shall be maintained on each property. Money designated to one piece of property on accounting records shall not be mingled with money designated for another property on the records. However, if a written agreement exists between the qualifying broker or broker in charge and property owner, allowing the mingling of funds of more than one property owned by that property owner, then mingling of funds from those designated properties only is allowed.
[8-15-97, A, 1-1-2000; 16.61.24.8 NMAC - Rn & A, 16 NMAC 61.24.8, 1-1-2002; A, 12-31-2008]

16.61.24.16 SHORT TERM RENTALS: The following special provisions apply only with respect to the management of short-term rentals:

A. Staff of the brokerage handling short-term rentals who engage only in taking reservations for short term rentals shall not be required to be licensed, but shall comply with Part 21: Unlicensed Assistants.

B. Brokerages managing short-term rental properties may enter into a written agreement with an owner [~~as to the manner in which payments made by credit card are to be deposited and disbursed. This agreement may include~~] granting permission to hold credit card charge slips given as a security and/or damage deposit for return to the tenant at the end of the short-term rental period.

[~~C. In the case of short-term rentals only, the qualifying broker may deposit nontrust funds into the trust account for the purpose of paying fees charged for credit card transactions~~.]
[8-15-97, A, 2-14-2000; 16.61.24.16 NMAC - Rn & A, 16 NMAC 61.24.16, 1-1-2002; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.27 NMAC Sections 8 and 9, effective 12-31-2008.

16.61.27.8 [~~REQUIREMENTS:~~ ~~When a New Mexico associate broker or qualifying broker cooperates with or makes a referral to or receives a referral from a foreign broker, for a fee, salary, commission or any other consideration, the following requirements shall be complied with by the New Mexico brokerage:~~

~~A. a specific written co-brokerage or referral agreement signed by the qualifying broker of the New Mexico brokerage and the foreign broker shall be executed prior to the closing of any transaction;~~

~~B. all negotiations in New~~

~~Mexico must be done through the New Mexico brokerage, with the New Mexico qualifying broker assuming responsibility for all activities conducted relating to properties within the state of New Mexico;~~

~~C. all funds handled for others in transactions on New Mexico real property shall be placed by the New Mexico qualifying broker in a bank, savings and loan or title company authorized to do business in New Mexico.~~] [RESERVED]

[8-15-97, A, 1-1-2000; 16.61.27.8 NMAC - Rn & A, 16 NMAC 61.27.9, 1-1-2002; A, 1-1-2006; Repealed, 12-31-2008]

16.61.27.9 TRANSACTIONS IN OTHER STATES: [~~A New Mexico associate broker or qualifying broker cooperating with a foreign broker on transactions dealing with real property outside the state of New Mexico is subject to the laws of the jurisdiction wherein the property is located. A New Mexico associate broker or qualifying broker found guilty of violating another jurisdiction's real estate licensing laws may be subject to disciplinary action by the New Mexico real estate commission.~~]

A. A real estate broker currently licensed by another state or licensing jurisdiction other than New Mexico, may engage in real estate activity in New Mexico as a foreign broker provided that he/she enters into a transaction specific written agreement with a New Mexico licensed qualifying broker prior to commencing such real estate activity. The foreign broker shall comply with all New Mexico laws, including but not limited to the real estate license law and real estate commission rules.

B. The New Mexico qualifying broker will have the same responsibilities for the transaction that he/she would have for any other transaction conducted through their brokerage. All funds handled for others in such transactions shall be deposited by the New Mexico qualifying broker in a bank, savings and loan institution, or title company authorized to do business in New Mexico.

C. A New Mexico licensed broker found to have violated another state's license law or rules in the course of acting as a foreign broker in that state may be subject to section 61-29-12 A (12) of the real estate license law which provides that the commission may suspend, revoke, or condition a license if the broker has been the subject of disciplinary action in another state or jurisdiction.

[8-15-97, A, 1-1-2000, A, 2-14-2000; 16.61.27.9 NMAC - Rn & A, 16 NMAC 61.27.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.31 NMAC Section 8, effective 12-31-2008.

16.61.31.8 REQUIREMENTS:

A. Each qualifying broker shall place and maintain a legible sign[~~, the letters of which shall not be less than two (2) inches high,~~] in a conspicuous place near the office entrance identifying them as the qualifying broker. The trade name of the brokerage as registered with the commission shall be clearly shown.

B. In the case of a qualifying broker whose office is located in an office building, the qualifying broker may comply with this regulation by listing their name on the directory of offices provided by the office building and by displaying the trade name on or near the office entrance.

[1-1-2000, A, 2-14-2000; 16.61.31.8 NMAC - Rn, 16 NMAC 61.31.8, 1-1-2002; A, 12-31-2008]

NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.36 NMAC Section 8, effective 12-31-2008.

16.61.36.8 COMPLAINTS: The commission may file a complaint against any person who engages in the business or acts in the capacity of a real estate broker, real estate commission approved education sponsor or instructor, in this state with or without a New Mexico real estate license based on information indicating that there may have been a violation of the Real Estate License Law or the commission rules. The commission may also act on a complaint made by a member of the commission, a member of the public, or another real estate broker. Upon receipt of a complaint the commission will determine if the complaint is within its jurisdiction. If the commission determines the complaint is within its jurisdiction, the complaint will be assigned for investigation.

[16.61.36.8 NMAC - Rp, 16 NMAC 61.36.8, 1-1-2002; A, 1-1-2006; A, 12-31-2008]

NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to 1.10.12 NMAC, Section 15, effective 11-3-2008.

1.10.12.15 A B S E N T E E PRECINCT BOARDS:

A. On election day, or pursuant to Section 1-6-11 NMSA 1978, prior to 7:00 a.m., the county clerk shall issue a receipt for all voting machines and ballot boxes to a special deputy county clerk. The receipt shall indicate the date and time the machine was removed from the office of the county clerk or alternate location, by whom, the serial number of the machine and the number of votes recorded on the machine. At 7:00 a.m. on election day, or pursuant to Section 1-6-11 NMSA 1978, a special deputy county clerk shall deliver the electronic voting machines, all ballot boxes and the absentee ballot register to the absentee precinct board. The special deputy county clerk shall obtain a receipt executed by the presiding judge and each election judge specifying the serial number of the machine, the number of votes recorded on the machine, the number of ballot boxes delivered and shall return such receipt to the county clerk for filing.

B. The county clerk shall issue red pencils to be used as writing instruments by the precinct board, except the presiding judge shall be issued an ink pen for the purpose of signing and filling out documents required by the Election Code. Precinct board members handling or counting ballots shall have no other writing or marking instruments.

C. If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, [~~precinct board members shall count the ballot only if the voter has marked a cross (X) or a check (√) within the voting response area, circled the name of the candidate or both~~] the counting team shall count the ballot as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent. In the instance of machine malfunction, the precinct board shall hand tally ballots.

D. Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period and absentee ballots cast in-person on a voting machine in the office of the county clerk or at an alternate location shall be counted by precinct.

E. Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period shall not be counted on the same voting system used for in-person voting at the office of the county clerk or on any voting system used at an alternate location.

F. The absentee precinct board shall tally alternative, replacement, presidential and federal ballots only after determination that the voter has not voted with an absentee ballot or in person as an

early voter.

G. An absentee ballot without a signature on the outer envelope shall be rejected, pursuant to the provisions of the Election Code, however a signature shall not be rejected because it contains an abbreviated name, lack or middle initial or name, or lack of suffix, provided that the absentee precinct board can identify the voter with other information provided on the outer envelope.

[1.10.12.15 NMAC - N, 3-31-2000, A, 4-30-02; A, 7-15-03, A 4-30-04; A, 4-28-06; A, 9-15-08; A/E, 9-30-08; A/E, 11-3-08]

NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to 1.10.22 NMAC, Section 9, effective 11-3-08.

1.10.22.9 COUNTY CLERK PROCEDURES:

A. The provisional ballot outer envelope containing the voter's oath shall not be opened until the county clerk has determined the reason the provisional voter's name was not on the signature roster, or whether the voter has provided identification, if required, by the Election Code. The county clerk shall place any naked ballot in an individual manila envelope to replace the inner secrecy envelope and mark the voter's correct voting precinct on that envelope.

B. The county clerk has the authority to determine the qualification of a provisional ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional ballot, absentee provisional ballot or in-lieu of absentee ballot because the voter's address on the affidavit does not match the voter's address on the voter's certificate of registration, provided the county clerk can identify the voter with other information provided on the affidavit.

C. The county clerk shall determine the qualification or a provisional ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional ballot, absentee provisional ballot or in in-lieu of absentee ballot because the voter has used an abbreviated name, address, middle name, middle initial or suffix, provided the county clerk can identify the voter with other information provided on the affidavit.

D. The county clerk shall determine the qualification of a provisional ballot but shall not disqualify any provisional ballot because the voter did not sign both the affidavit and the polling place roster if the voter provided a valid signature and the county clerk can identify the voter with information provided on the outer envelope of the paper ballot or affidavit.

E. A provisional ballot shall be qualified if both:

(1) the voter has provided all the information under Section 1-12-25.3 and Section 1-12-25.4 NMSA 1978, provided that a voter shall not have his vote disqualified under Subsections B, C or D of this section, and

(2) if the county clerk can determine the voter is a registered voter in the county; if a voter is registered in county, but cast a provisional ballot at the wrong polling place, the county clerk shall ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted; if there is a conflict between New Mexico statute and this statewide standard, the statute will control.

F. A provisional ballot shall be rejected if: (a) the voter has not provided all the information under Sections 1-12-25.3 and 1-12-25.4 NMSA 1978 subject to the provision in Subsections B, C or D of this section; (b) the clerk cannot determine the voter is a registered voter in the county; (c) the voter has voted outside his county of registration; (d) voter has voted an absentee ballot in the election; (e) voter's registration was properly cancelled; or

(f) voter failed to meet the voter identification requirements. If there is a conflict between New Mexico statute and this statewide standard, the statute will control.

G. A county canvass observer, pursuant to Section 1-2-31 NMSA 1978 may be present during the provisional ballot qualification process and canvass. At all times while observing the process and canvass, the observer shall wear self-made badges designating them as authorized observers of the organizations which they represent. They shall not wear any other form of identification, party or candidate pins. The observer shall not: (a) perform any duty of the workers; (b) handle any material; (c) interfere with the orderly conduct of workers conducting the process; and (d) use cell phones, audio or video tape equipment while observing the process. The provisional ballot qualification process shall be run with the county clerk staff member reading aloud the name and address of the provisional ballot. A county canvass observer may interpose a challenge to the qualification of the voter consistent with Subsections A - E of Section 1-12-20 NMSA 1978. The county clerk staff member shall handle the challenge consistent with Section 1-12-22 NMSA 1978. The county clerk staff member will then announce aloud his or her decision regarding whether that provisional vote will or will not be qualified; the county clerk shall assign a different county clerk staff member than those involved in the qualification process to receive and open the ballot from outer envelope for the tallying process. The observer may preserve for future reference written memorandum of any action and may raise it at the canvass meeting. Observers shall not be in the line of sight or view or make notes of the voter's personal information: date of birth, party affiliation, and social security number.

H. The determination of the provisional voter's status and whether the ballot shall be counted, along with the research done by the county clerk shall be noted on the provisional ballot outer envelope. The county clerk shall, after status determination, separate qualified ballots from unqualified ballots. Unqualified ballots shall not be opened and shall be deposited in an envelope marked "unqualified provisional ballots" and retained for twenty-two (22) months, pursuant to 42 USC 1974. The outer provisional ballot envelope for qualified provisional ballots shall be opened and deposited in an envelope marked "qualified provisional ballot outer envelopes" and retained for twenty-two (22) months, pursuant to 42 USC 1974. The county clerk shall mark the number of the voter's correct precinct on the inner secrecy envelope and ballot for the purposes of a recount or contest, but no other information indicating the identity of the voter shall be furnished to the county canvassing board or any other person. After the tally of qualified provisional ballots, the county clerk shall deposit the counted provisional ballots in an envelope marked "counted provisional ballots" and retained for twenty-two (22) months, pursuant to 42 USC 1972.

I. The county canvassing board shall direct the county clerk to prepare a tally of qualified provisional ballots, in-lieu of absentee ballots and absentee provisional ballots and include them in the canvass presented to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct. Provisional ballots, in-lieu of absentee ballots and absentee provisional ballots shall be tallied on separate tally sheets. The county clerk shall process provisional absentee ballots using the same procedures used for provisional ballots cast at the polling place or alternate location. The tally sheet may be a photocopy of a precinct tally sheet, however it shall be clearly marked as designated for provisional ballots, in-lieu of absentee ballots or provisional absentee ballots. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional ballot tally to the office of the secretary of state. The county clerk shall also prepare a report, on behalf of the county canvassing board, on the disposition of all provisional ballots cast within the county. The report shall contain the name, address and correct precinct number of each provisional voter, in-lieu of

absentee ballot voter or provisional absentee ballot voter. The report shall be transmitted to the secretary of state within 10 days of the election. Pursuant to the Help America Vote Act, information about access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot. The report shall include an explanation why a provisional voter's name was not included on the signature roster and the reason why any provisional voter's ballot, in-lieu of absentee voter's ballot or provisional absentee voter's ballot was not counted. The report shall be in alphabetical order.

J. Counting procedures for provisional ballots. The county clerk shall count the qualified provisional ballots using the hand tally method. One team of at least two persons shall be used to count each qualified provisional ballot. The team shall consist of one reader and one marker, not of the same political party whenever feasible. The reader shall read the ballot to the marker and the marker shall observe whether the reader has correctly read the ballot; the marker shall then mark the tally sheet of the precinct where the vote was cast, and the reader shall observe whether the marker correctly marked the tally sheet.

K. Votes to be counted. When counting provisional ballots, votes shall be counted for only those positions or measures for which the voter was eligible to vote. If a ballot is marked indistinctly or not marked according to the instructions for that ball ot type, the counting team shall count a vote [~~only if the voter has marked a cross (X) or a check (✓) within the voting response area, circled the name of the candidate or both~~] as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1 -9-4.2 NMSA 1978. In no case, shall the counting team mark or re -mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

L. The county clerk shall establish a free access system, such as a toll-free telephone number or internet web site, that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted, and, if the vote was not counted, the reason it was not counted. Access to this system is restricted to the voter who cast the ballot.

M. The county clerk may designate emergency paper ballots for use as provisional ballots.

N. The county clerk shall notify by certified mail each voter whose provisional ballots was not counted of the reason the ballot was not counted. The clerk shall send out this notification any time between the closing of the polls on election day through the tenth calendar day following the election. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal this decision to the county clerk.

O. The appeal process pursuant to Subsection C of Section 1-12-25.2 NMSA 1978 shall be conducted as follows:

(1) the county clerk shall select a hearing officer(s) from staff or a person from the community who is not affiliated with any candidate on the ballot and knowledgeable of election law and the clerk shall provide a disability accessible room for the hearing officer to work;

(2) the voter shall schedule an appointment time for an appeal by calling the county clerk's office and shall appear under oath and show by a preponderance of the evidence that the vote should be counted;

(3) the voter may appear with counsel;

(4) the appeal hearing shall be an open meeting, but the voter's personal information:

(a) date of birth;

(b) party affiliation, and

(c) social security number shall not be stated out loud and the public shall not be in the line of sight or view or make notes of the voter's personal information;

(5) county clerk staff and the public may make brief public comment and offer relevant exhibits but only the hearing officer shall be permitted to cross examine the witness;

(6) the hearing officer shall not be bound by the rules of civil procedure, but may use them for guidance and shall make an immediate oral decision or send by certified mail a letter decision to the voter;

(7) there is no statutory right of appeal;

(8) all decisions shall cite a provision of the Election Code explaining the disposition and be announced or mailed by the Monday before the state canvassing board meeting;

(9) if the voter prevails, the hearing officer shall direct the county clerk staff to handle the ballot as a qualified provisional ballot as found above; and

(10) the county clerk shall notify the county canvassing board of the completion and results of the appeals process.

[1.10.22.9 NMAC - Rp, 1.10.22.9 NMAC, 4-28-06; A/E, 10-2-08; A/E, 11-3-08]

NEW MEXICO
SECRETARY OF STATE

This is an emergency amendment to 1.10.23 NMAC, Sections 7, 9, 10 and a new Section 12, effective 11-3-08. The illustrations in Section 12 are new material although they are not underlined.

1.10.23.7 DEFINITIONS:

A. Abbreviated name means shortened given or surname including, but not limited to, 'Pat' for Patrick, Patricio, or Patricia, 'Wm' or 'Bill' for William, 'Rick' for Ricardo or Richard, 'Mtz' for Martinez.

B. Absentee ballot means a method of voting by ballot, accomplished by a voter who is absent from the voter's polling place on election day.

C. Absent voter precinct board means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.

D. Absentee provisional ballot means the paper ballot issued to a provisional absentee voter.

E. Audit means a check of the voting systems conducted pursuant to Section 1-14-13.1 NMSA 1978.

F. Ballot means a paper ballot card that is tabulated on an optical scan vote tabulating system or hand tallied.

G. Contest means court litigation that seeks to overturn the outcome of an election pursuant to Sections 1-14-1 *et seq.*

NMSA 1978.

H. County canvassing board means the board of county commissioners in each county.

I. Designated polling place means the voting location assigned to a voter based on that voter's residence within a precinct of the county.

J. High speed central count marksense ballot tabulator means a self-contained optical scan vote tabulating system that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

K. In-lieu of absentee ballot means a ballot provided to a voter at his designated polling place when the absentee ballot was not received by the voter before election day.

L. Observer means a voter of a county who has been appointed by a candidate, political party chair, or election related organization pursuant to the provisions of the Election Code.

M. Optical scan or **marksense ballot** means a ballot used on an optical scan vote tabulating system or EVT marksense voting system.

N. Optical scan vote tabulating system or **electronic vote tabulating (EVT) marksense voting system** means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot imprinted on either or both faces with text and voting response areas, and includes a high-speed central count marksense ballot tabulator. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response areas.

O. Overvote means the selection by a voter of more than the number of alternatives allowed in a voting response area.

P. Provisional absentee voter means a voter who votes on an absentee provisional ballot after initially attempting to vote by absentee ballot but whose name does not appear on the signature roster or has failed to meet the voter identification requirements in the Election Code.

Q. Provisional ballot means a ballot that is marked by a provisional voter.

R. Provisional voter means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

S. Recheck shall have the meaning given in Subsection A of Section 1-1-6 NMSA 1978.

T. Recount shall have the meaning given in Subsection B of Section 1-1-6 NMSA 1978 and shall include hand recounts conducted pursuant to this part.

U. Signature roster means the certified list of voters at a polling place which is signed by a voter when presenting himself on election day.

V. Tally sheet means a document prepared by the county clerk and used for the counting of ballots.

W. Undervote means the failure of a voter to select any of the alternatives in a voting response area.

X. Vote shall have the meaning given in Subsection A and Paragraphs (1) through [~~(3)~~] (4) of Subsection B of Section 1-9-4.2 NMSA 1978.

Y. Voter means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.

Z. Voting response area means the place on a ballot where the voter is instructed to mark his preference for a candidate or question.

[1.10.23.7 NMAC - N/E, 10-2-08; A/E, 11-3-08]

1.10.23.9 "TWO PERCENT" AUDIT PROCEDURES: This section applies to audits of gubernatorial and presidential races in a general election, as required by Section 1-14-13.1 NMSA 1978.

A. Simple random sampling of voting systems required for audit. In selecting the voting systems to be used in an audit, the secretary of state shall obtain a random sample of two percent (2%) of voting systems from each county in accordance with the procedures in this subsection.

(1) By no later than 1:00 P.M. on the Monday immediately following election day, the secretary of state shall select the voting systems to be audited. The serial number of each voting system used prior to or on election day shall be placed on a separate piece of paper and the papers with the serial numbers shall be placed in a separate container for each county. The secretary of state shall pull voting system numbers at random from each container until two percent (2%) of voting systems from each county are drawn. If two percent (2%) of all voting systems in a county is less than one voting system, the secretary of state shall draw one voting system for that county.

(2) By no later than 1:00 P.M. on the Tuesday immediately following election day, the secretary of state shall notify the county clerks of the serial numbers of the voting systems that have been selected for auditing.

(3) The random sampling process shall be open to public observation. At least seven (7) days prior to the random sampling conducted pursuant to this subsection, the secretary of state shall post notice on its web site of the time, date, and location of the random sampling.

B. Time and place; ballot security.

(1) The county clerk shall choose a location for the audit that is accessible to the public.

(2) The county clerk shall arrange for transportation of ballots to the audit site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the audit site.

(3) Prior to conducting the audit, the county clerk shall seek an order from the district judge permitting the county clerk to open those ballot boxes containing ballots from the voting systems selected for auditing.

(4) The county clerk shall assign counting teams of at least two members to particular voting systems. The team shall consist of one reader and one marker, not of the same political party whenever feasible.

(5) At least one person in addition to the county clerk shall witness all movement of ballots during the audit, and all movement of ballots from and to the ballot box during the audit process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.

C. Hand counting procedures for audits. The ballots from the voting systems selected for auditing shall be hand tallied pursuant to the procedures in this subsection. The secretary of state shall provide tally sheets for only those races being tallied as part of the audit, and shall include options for marking undervotes and overvotes.

(1) The counting team shall ensure that the serial number for the voting system and the type of ballot to be counted are prominently displayed on the tally sheet.

(2) To count the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the recount of a voting system or portion of a voting system, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.

(3) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall as provided for in Subsection

A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

D. Audit reconciliation procedures.

(1) Immediately upon the conclusion of the audit, the county clerk shall compare the results of the machine count with the results of the hand tally, provide the results to the secretary of state in writing, and make the results available to the public. The secretary of state shall combine the county files and place the results on the secretary of state's website.

(2) The secretary of state shall determine whether a recount is required pursuant to Subsection B of Section 1-14-13.1 NMSA 1978, and within five (5) days of the completion of the state canvass, file notice with the appropriate canvassing board(s) that a recount is required. In the notice, the secretary of state shall specify the office and precincts that shall be recounted. When a recount is required by Section 1-14-13.1 NMSA 1978, a recount shall be made in all precincts of the legislative district in which the discrepancy occurred.

(3) All recounts required pursuant to Subsection B of Section 1-14-13.1 NMSA 1978 shall be conducted pursuant to 1.10.23.10 NMAC.

[1.10.23.9 NMAC - N/E, 10-2-08; A/E, 10-16-08; A/E, 11-3-08]

1.10.23.10 RECOUNT AND RECHECK PROCEDURES: This section applies to rechecks and recounts conducted pursuant to Sections 1-14-14 and 1-14-24 NMSA 1978, and recounts resulting from audits performed under Section 1-14-13.1 NMSA 1978. Except as otherwise provided in Subsection E of Section 1-14-23 NMSA 1978 and this section, the recheck and recount procedures in this section shall be used in conjunction with the procedures in Sections 1-14-16 and 1-14-18 through 1-14-23 NMSA 1978.

A. Time and place; ballot security.

(1) Pursuant to Subsection A of Section 1-14-16 NMSA 1978, the recount or recheck shall be held at the county courthouse.

(2) The county clerk shall arrange for transportation of ballots to the recount or recheck site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the recount or recheck site.

(3) The county clerk shall convene the absent voter precinct board no more than ten (10) days after the filing of the application for a recount or recheck, notice of an automatic recount, or notice of a recount required by Subsection B of Section 1-14-13.1 NMSA 1978.

(4) The presiding judge of the absent voter precinct board shall assign counting teams of at least two members, of opposite political parties if possible, to particular precincts.

(5) At least one person in addition to the district judge or presiding judge shall witness all movement of ballots during the recount, and all movement of ballots from and to the ballot box during the recount process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.

B. Random selection of ballots to determine whether the recount shall be hand tallied or electronically tabulated. This subsection does not apply to recounts resulting from audits performed under Section 1-14-13.1 NMSA 1978. To determine whether votes shall be recounted using optical scan vote tabulating systems pursuant to Section 1-14-23 NMSA 1978, the absent voter precinct board shall electronically tabulate absentee ballots from the precincts to be recounted in accordance with the procedures in this subsection.

(1) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into an M-100 optical scan vote tabulating system. A summary zeros results report shall be generated and certified by the precinct board.

(2) Absentee ballots equal to at least the number required by Subsection B of Section 1-14-23 NMSA 1978 shall be fed into the optical scan vote tabulating system. Any absentee ballots rejected by the optical scan vote tabulating system shall be placed back into the ballot boxes and additional absentee ballots shall be inserted until the number of ballots tabulated by the system is equal to at least the amount required by Subsection B of Section 1-14-23 NMSA 1978. If the absent voter precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedure in Paragraph (1) of this subsection shall be repeated for each precinct being tabulated.

(3) The absent voter precinct board shall then hand tally the votes from the same ballots counted by the optical scan vote tabulating system in accordance with the procedures in Subsection E of this section.

(4) Pursuant to Subsection C of 1-14-23 NMSA 1978, for statewide or federal offices, if the results of the hand-tally and the electronic vote tabulating system differ by one-fourth of one percent or less, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.

(5) Pursuant to Subsection D of 1-14-23 NMSA 1978, for offices other than statewide or federal offices, if the results of the hand-tally and the optical scan vote tabulating system differ by the greater of one percent or less, or two votes, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.

C. Electronic recount procedures.

(1) Class A counties. If the remaining ballots in a class A county are to be re-tabulated using optical scan vote tabulating systems, the absent voter precinct board shall use an M-650 optical scan vote tabulating system in accordance with the procedures in this paragraph, provided that the M-650 optical scan vote tabulating system was not used to tabulate voted absentee, early-in person or election day ballots. If the M-650 optical scan vote tabulating system was used to tabulate voted ballots, the absent voter precinct board shall use M-100 optical scan vote tabulating systems in accordance with the procedures in Paragraph (2) of this subsection.

(a) To recount the ballots for a particular ballot type (e.g., absentee ballots, election day ballots, early in-person ballots), a results cartridge programmed with ballot configurations for all precincts to be recounted in the county shall be inserted into the optical scan vote tabulating system. A summary zeros report shall be generated and certified by the absent voter precinct board.

(b) The ballots for the ballot type being recounted shall be inserted into the optical vote tabulating system.

(c) The votes from any ballots rejected by the system shall be tallied by hand in accordance with the procedures in Subsection E of this section.

(d) A machine report shall be generated for each precinct after ballots are tabulated for that precinct, and the machine results shall be zeroed out. The ballots for the next precinct shall be tabulated until all ballots for the ballot type being recounted are tabulated.

(e) The procedures in this paragraph shall be repeated for each ballot type being recounted.

(2) Non-class A counties. If the remaining ballots in a non-class A county are to be re-tabulated using optical scan vote tabulating systems, the absent voter precinct board shall use M-100 optical scan vote tabulating systems selected at random by the county clerk in accordance with the procedures in this paragraph.

(a) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into the optical scan vote tabulating system chosen by the county clerk.

(b) A summary zeros report shall be generated and certified by the precinct board.

(c) The ballots for the ballot type (e.g., absentee ballots, election day ballots, early in-person ballots) and precincts to be recounted shall be fed into the optical scan vote tabulating system.

(d) All ballots rejected by the tabulator shall be tallied by hand in accordance with the procedures in Subsection E of this section.

(e) A machine report shall be generated and certified by the absent voter precinct board.

(f) If the absent voter precinct board uses a results cartridge programmed with ballot configurations for all precincts in the county, then the procedures in this paragraph shall be repeated for each ballot type being recounted. If the absent voter precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedures in this paragraph shall be repeated for each precinct being tabulated.

(3) If the voted ballots in a precinct are unavailable or incomplete for recount, the district judge, in consultation with the county clerk, may order that a results tape or report be regenerated from the results cartridge that was used to tabulate the voted ballots.

D. Review of rejected ballots and re-tally of provisional, in-lieu of absentee ballots and other paper ballots in a recount.

(1) The district judge shall orally order that any ballot boxes, envelopes, or containers that hold provisional, in-lieu of absentee, and absentee provisional ballots be opened one at a time.

(2) The presiding judge shall count the total number of provisional, absentee provisional, and in-lieu of absentee ballots in each precinct and the number shall be compared to the previously certified signature roster count in that precinct and noted. Any discrepancies shall be noted.

(3) The county clerk shall review the qualification of all rejected provisional, absentee provisional, and in-lieu of absentee ballots pursuant to Section 1-12-25.4 NMSA 1978 and 1.10.22 NMAC.

(4) The absent voter precinct board shall review the qualification of all rejected absentee ballots in accordance with 1.10.12.15 NMAC and any other rejected ballots in accordance with applicable law.

(5) All previously and newly qualified ballots (including provisional, absentee provisional, in-lieu of absentee ballots, absentee ballots and other paper ballots) shall be recounted and the votes shall be added to the tally of the appropriate precinct.

(6) If any voting data changes as a result of this review, the county clerk shall update the report required in Subsection I of 1.10.22.9 NMAC.

E. Hand counting procedures for recounts. This subsection applies to hand recounts. The secretary of state shall provide tally sheets for only those races being recounted, and shall include options for marking undervotes and overvotes.

(1) The counting team shall ensure that the precinct and the ballot type (eg., election day, early in-person, absentee, in-lieu of absentee, and provisional) being counted are prominently displayed on the tally sheet.

(2) To recount the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.

(3) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote [~~only if the voter has marked a cross (X) or a check (✓) within the voting response area, circled the name of the candidate, or both~~] as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

F. Recount and recheck reconciliation procedures.

(1) Upon completion of a recount, the district judge or presiding judge shall tabulate the total vote count from the machine generated tapes or reports and the tally sheets from the hand recount.

(2) The county clerk or secretary of state in a statewide race shall compare the results of each recount or recheck to the results of the county or statewide canvass. County clerks shall make available to the public and provide to the secretary of state the results of the recount or recheck within five (5) days of the completion of the recount or recheck. The secretary of state shall combine the county files and place the results on the secretary of state's website.

(3) Pursuant to Subsection A of Section 1-14-18 NMSA 1978, the absent voter precinct board shall send the certificate of recount or recheck executed pursuant to Subsection D of Section 1-14-16 NMSA 1978 to the proper canvassing board.

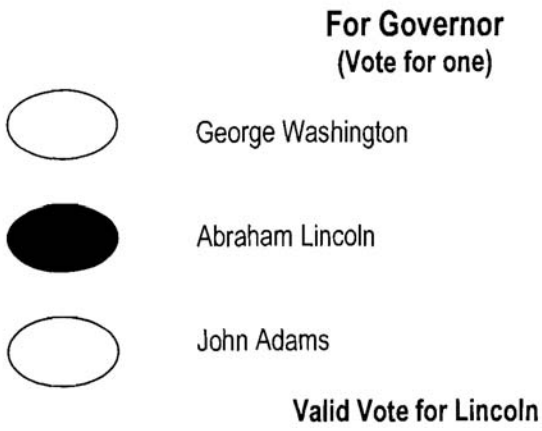
(4) In the event of a recount or recheck conducted pursuant to Section 1-14-14 NMSA 1978, if no error or fraud appears to be sufficient to change the winner, the county clerk may provide documentation of costs to the secretary of state, or directly to the candidate, for reimbursement from the money provided pursuant to Section 1-14-15 NMSA 1978.

[1.10.23.10 NMAC - Rn & A/E, 1.10.22.11 & 12 NMAC, 10-2-08; A/E, 11-3-08]

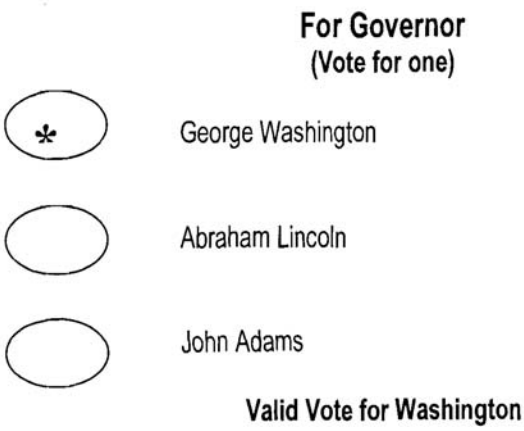
1.10.23.12 STANDARDS FOR WHAT CONSTITUTES A VOTE: All optical scan ballots that are read by a ballot scanner shall be counted in accordance with applicable provisions of the New Mexico Election Code. The following standards shall apply in determining whether a ballot has been properly voted and whether a vote should be counted for any office or ballot question when counting ballots by hand. In the event of a recount, a court should provide guidance as to whether the recount shall be conducted by a ballot scanner or by hand. These standards have been adopted in accordance with the New Mexico Election Code, where applicable.

[Continued on page 1203]

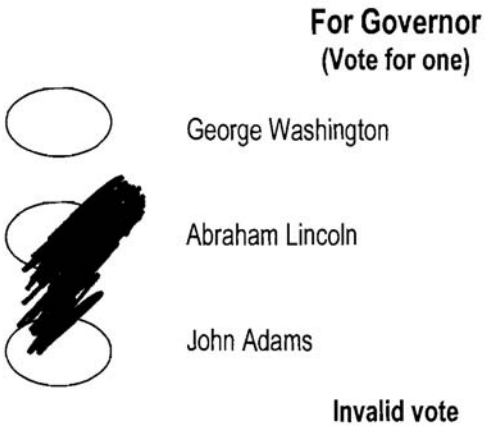
A. **Optical Scan 1** - A ballot that is properly marked, as specified by the legally valid ballot instructions, in the target area for an office or ballot question shall be counted as a vote for that candidate or ballot response.



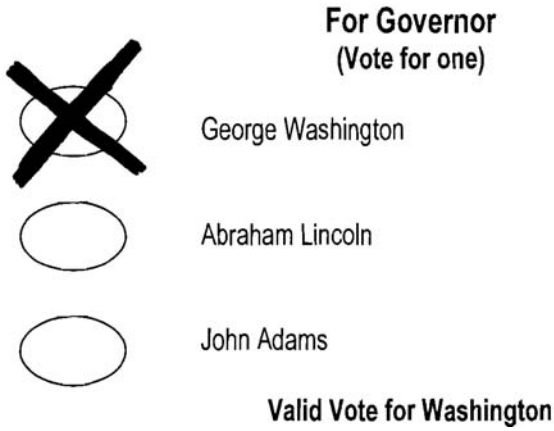
B. **Optical Scan 2** - A ballot containing a clear mark indicating the intent of the voter, any portion of which is contained in the target area and does not enter into another target area, shall be counted as a vote for that candidate or ballot response.



C. **Optical Scan 3** - A ballot that has any mark in the target area that partially extends into another target area or areas shall not be counted for that office or ballot question.



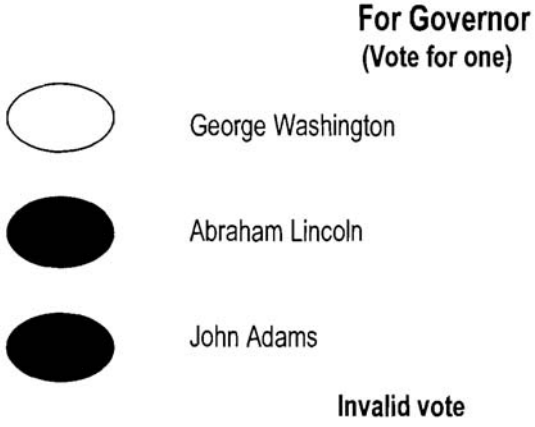
D. **Optical Scan 4** - A ballot that has any mark in the target area that partially extends into an area surrounding a candidate or ballot response, other than its target area, shall be counted as a vote for the candidate or ballot response so marked.



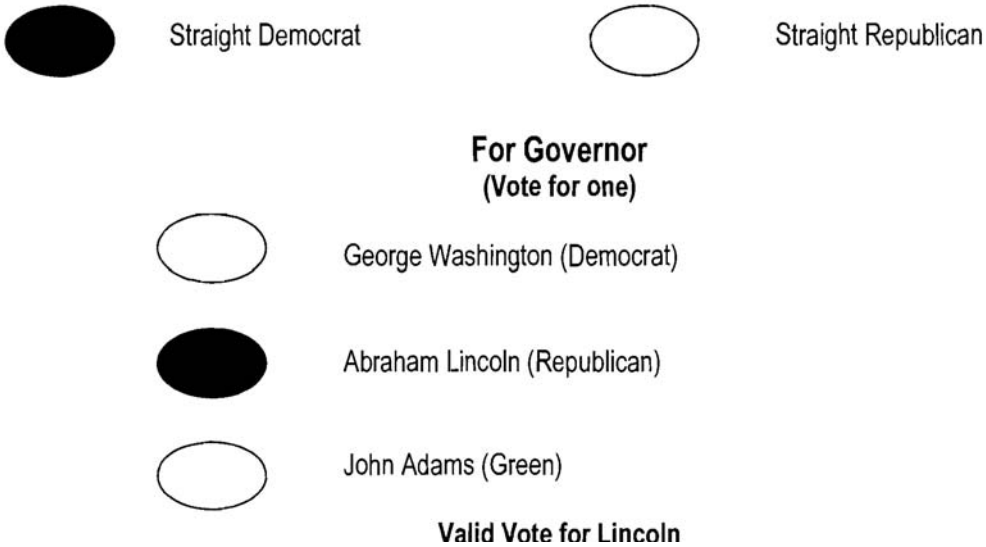
E. **Optical Scan 5** - A ballot properly marked with any device other than the marking device provided to the voter shall be counted.

F. **Optical Scan 6** - A ballot marked with more than one type of marking device shall not be counted for any office or ballot question on the ballot.

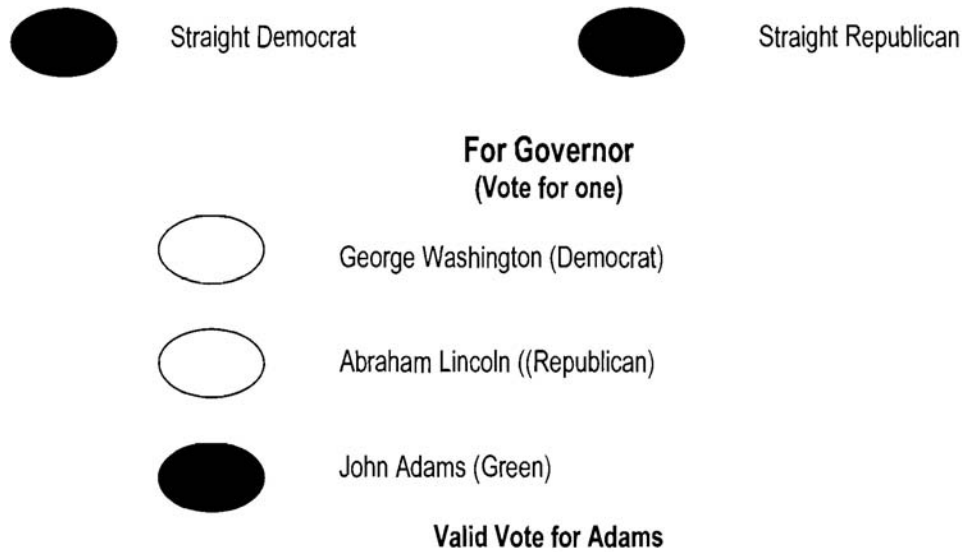
G. **Optical Scan 7** - A ballot with marks for more candidates in an office or more responses to a ballot question than permitted shall be deemed an over-vote, and no vote shall be counted for that office or ballot question.

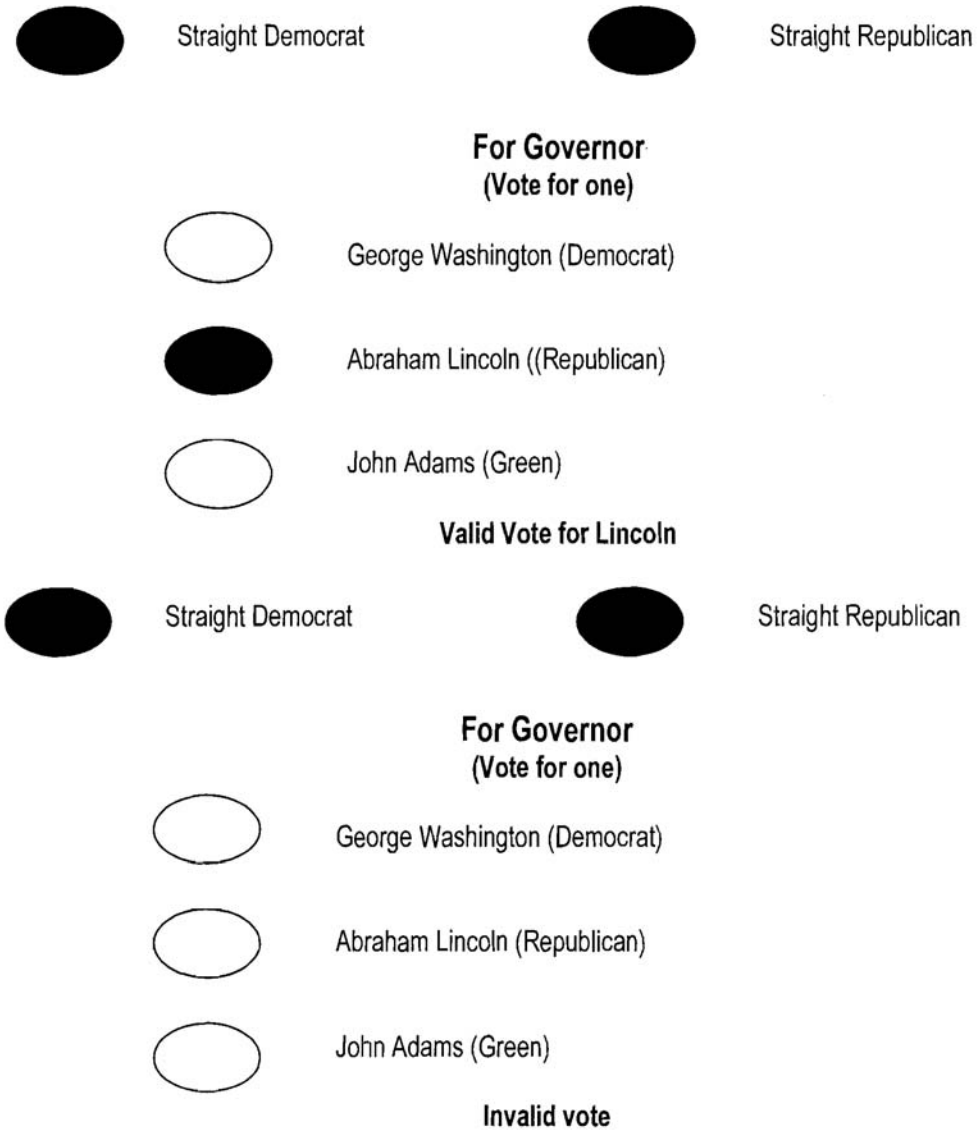


H. **Optical Scan 8** - A ballot with a proper mark in the straight party target area and with additional marks for candidates or ballot responses elsewhere on the ballot shall be counted for those candidates or ballot responses properly marked outside the straight party area. For the other offices on the ballot, the ballot shall be counted for the candidates of the political party for which the voter cast a straight party vote.

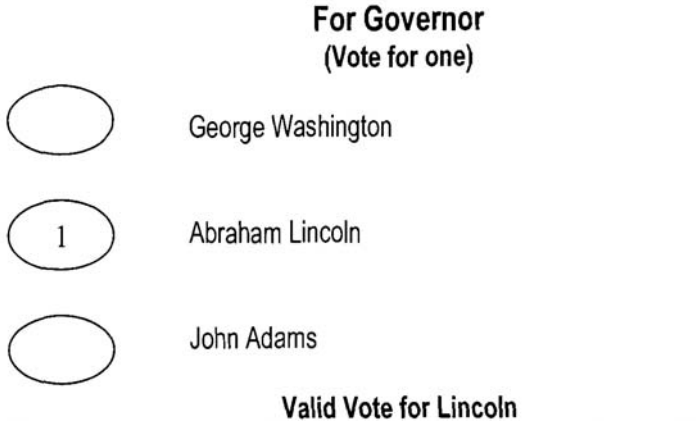


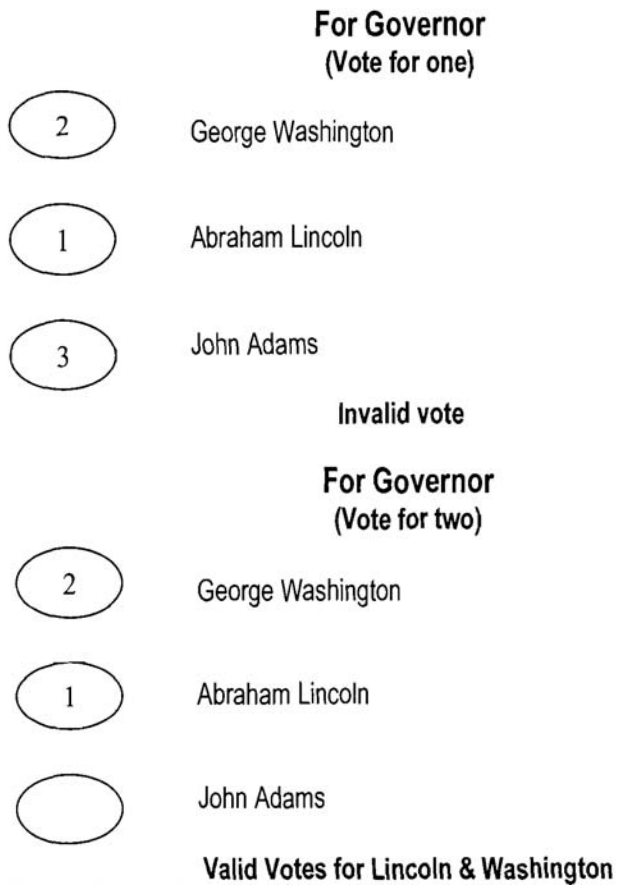
I. **Optical Scan 9** - A ballot with marks for more than one party in the straight party target areas, and with additional marks in the target areas of candidates or ballot responses elsewhere on the ballot, shall be counted only for those candidates or ballot responses properly marked.



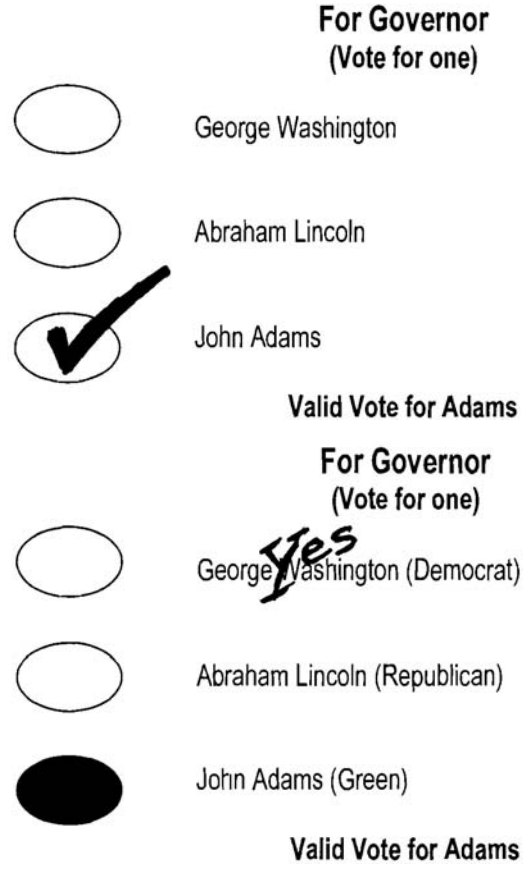


J. Optical Scan 10 - A ballot on which writings or remarks in the target area appear to be ranking candidates (letters, numbers, etc.) shall be considered valid marks only if they do not exceed the number of candidates permitted to be elected for that office.

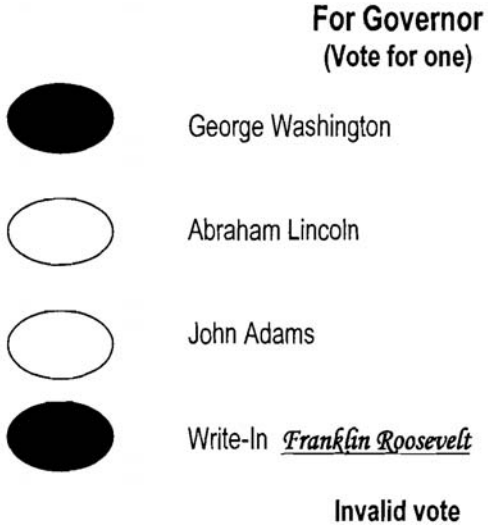




K. **Optical Scan 11** - A ballot with any writings or remarks regarding one or more candidates or ballot responses shall not be counted as a vote for that office or question, unless clarified by an additional mark or marks in the target area(s) that indicate support for those candidates or ballot responses.

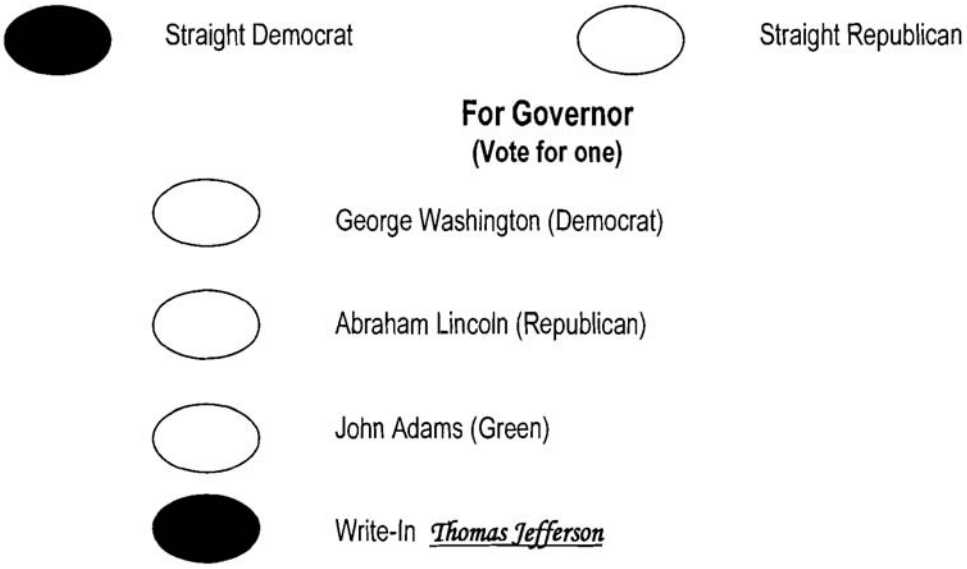


L. **Optical Scan 12** - A ballot on which the voter casts a vote on the ballot and properly writes in a different candidate in the write-in area shall be considered an over-vote for that office if the number of chosen candidates exceeds the number permitted to be voted for in that office and no vote shall be counted, except as provided by optical scan 13.



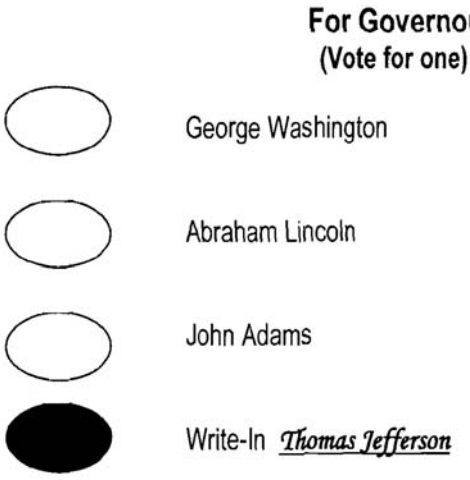
Invalid vote

M. **Optical Scan 13** - A ballot on which the voter casts a straight party vote and properly writes in a candidate in the write-in area shall be counted only for the write-in candidate in that office. For the other offices on the ballot, the ballot shall be counted for the candidates of the political party for which the voter cast a straight party vote.



Valid Vote for Jefferson

N. **Optical Scan 14** - A properly cast write-in vote shall contain a mark in the target area and, in the space provided, the written name of a candidate whose name does not otherwise appear on the ballot for that office.



Valid Vote for Jefferson

For Governor
(Vote for one)

George Washington (Democrat)

Abraham Lincoln (Republican)

John Adams (Green)

Write-In *Thomas Jefferson*

Invalid Vote

For Governor
(Vote for one)

George Washington

Abraham Lincoln

John Adams

Write-In *Abraham Lincoln*

Invalid Vote

For Governor
(Vote for one)

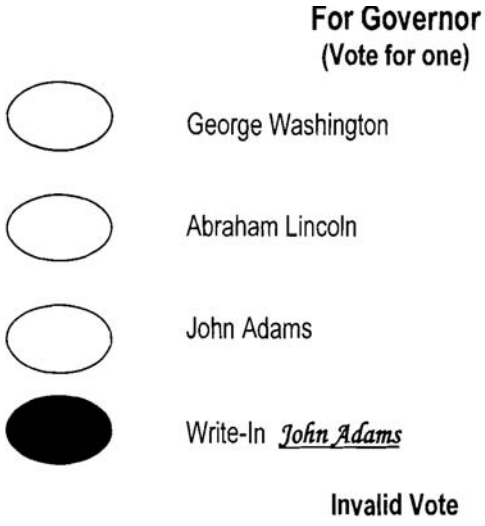
George Washington

Abraham Lincoln

John Adams

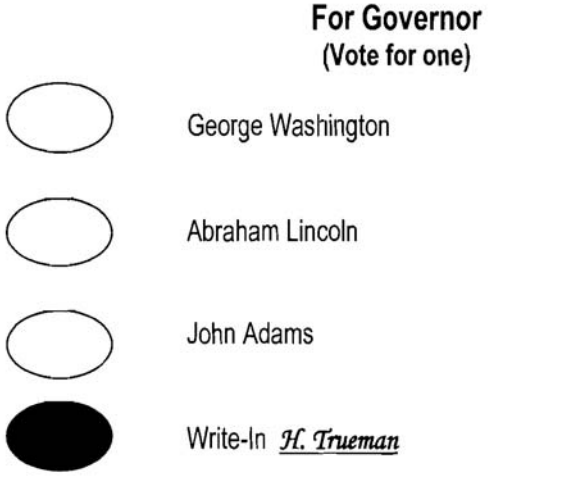
Write-In *A. Lincoln*

Invalid Vote



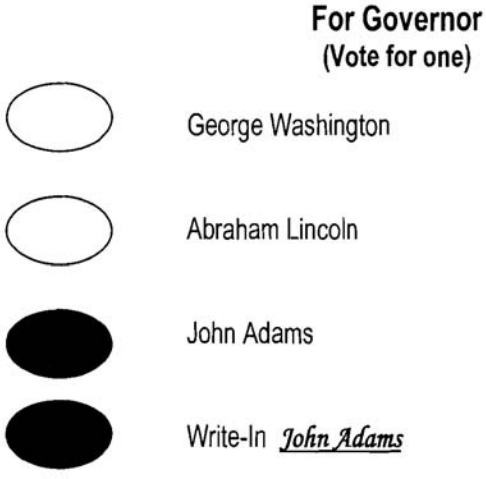
Invalid Vote

O. **Optical Scan 15** - All properly cast write-in votes must be counted exactly as they appear on the ballot.



Valid Vote for H. Trueman only

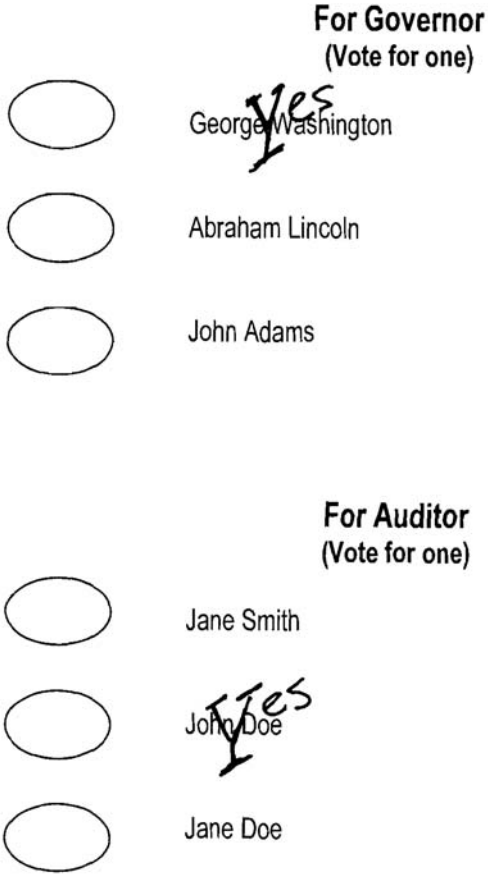
P. **Optical Scan 16** - If a voter designates a vote for a named candidate on the ballot and also properly writes in the same candidate in the write-in area, no vote shall count for that candidate.



Invalid Vote

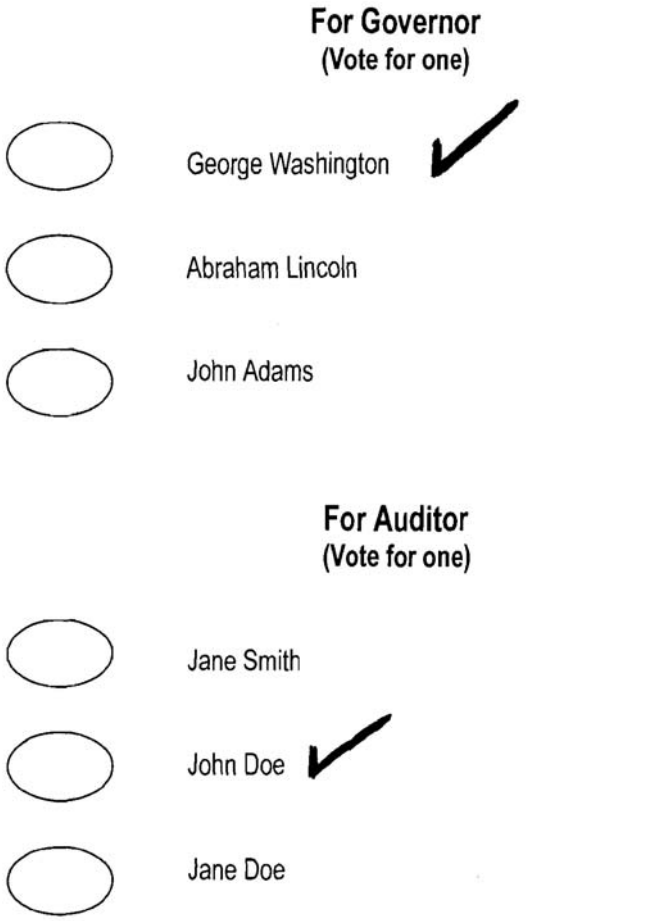
Q. **Optical Scan 17** - A ballot on which the voter does not mark the voting response area but instead marks the ballot in a consistent manner, such as placing some type of consistent mark (other than a circle), on or around a candidate's name, shall be counted as a vote for that candidate or ballot response.

Example 1)



Valid vote for George Washington & John Doe

Example 2)



Valid vote for George Washington & John Doe

[1.10.23.12 NMAC - N/E, 11-3-08]

SUBMITTAL DEADLINES AND PUBLICATION DATES

2008

Volume XIX	Submittal Deadline	Publication Date
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Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

2009

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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 14
Issue Number 10	May 15	May 29
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 3	August 14
Issue Number 16	August 17	August 31
Issue Number 17	September 1	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	November 2	November 13
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

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