

**NEW
MEXICO
REGISTER**

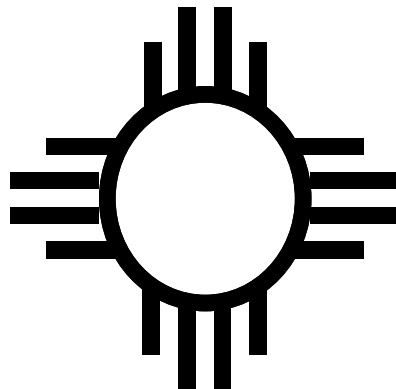


Volume XVI
Issue Number 15
August 15, 2005

New Mexico Register

Volume XVI, Issue Number 15

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

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New Mexico Register

Volume XVI, Number 15

August 15, 2005

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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.

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The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND REGULAR MEETING

On October 12, 2005, at 5:15 pm, the Albuquerque-Bernalillo County Air Quality Control Board (Board) will hold a combined public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

Proposal to amend 20.11.102 NMAC, Oxygenated Fuels (Part 102) as described below, and to incorporate the complete and amended 20.11.102 NMAC into the New Mexico State Implementation Plan for air quality (SIP).

The purpose of the Part 102 combined hearing is to receive testimony on proposed changes to 20.11.102 NMAC, Oxygenated Fuels, and also to receive testimony on placing the amended Part 102 into the SIP. The Proposed amendments to Part 102 include:

* Deletion of an obsolete procedures manual and references thereto. This will necessitate the direct incorporation of language into the regulation regarding registration, recordkeeping and labeling requirements, sampling and analysis procedures, and enforcement provisions.

* Sampling and analysis procedures will be amended to replace references to specific equipment with references to ASTM D-4815 and ASTM D-5845 test methods.

* Proposed enforcement provision amendments include deletion of an unenforceable fine schedule to be replaced with a graduated corrective action and closure schedule based on level of non-compliance.

Following the combined hearing, the Board will hold its regular monthly meeting during which the Board is expected to consider adopting the proposed amendments to 20.11.102 NMAC, Oxygenated Fuels, and incorporating the complete and amended regulation into the SIP.

The Air Quality Control Board is the feder-

ally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Board to administer and enforce the Clean Air Act and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is asked to submit a written notice of intent before 5:00 pm on Wednesday October 5, 2005 to: Attn: October Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The notice of intent shall identify the person's name, address and affiliation.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on October 5, 2005. The comments shall include the name, address and affiliation of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name, address and affiliation information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at nbutt@cabq.gov or by phone at (505) 768-2660.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes.

NEW MEXICO COAL SURFACE MINING COMMISSION

NOTICE OF RULE MAKING

STATE OF NEW MEXICO COAL SURFACE MINING COMMISSION SANTA FE, NEW MEXICO

The Coal Surface Mining Commission will conduct a public hearing at 1:00 P.M. on **September 9 2005**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, to consider the adoption of amendments to 19.8 11 and 12 NMAC. The proposed amendments will make changes to the administrative and judicial review process for permitting actions, notices of violation, cessation orders and show cause orders. The proposed amendments will also clarify the procedures for petitioning for award of legal costs and attorneys' fees. Minor corrections and style adjustments to conform with the requirements of the New Mexico Administrative Code are also proposed. The Commission may take action on the proposed amendments at the close of the hearing.

Copies of the text of the proposed amendments are available from Commission Clerk James O'Hara at (505)-476-3413 or from the Mining and Minerals Division web site at http://www.emnrd.state.nm.us/Mining/csmc/19.8_2005amend.pdf. 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 Mr. O'Hara at (505)-476-3413 as soon as possible.

Bill Brancard, Director
Mining and Minerals Division

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULEMAKING NOTICE

On Monday, August 22, 2005, beginning at 9:00 a.m. at the State Capitol Building, 490 Old Santa Fe Trail, Third Floor - Room 322, Santa Fe, NM 87501, the State Game Commission will meet in Public Session to consider action as appropriate on the following: Consent Agenda for Revocation of

Hunting and Fishing License Privileges, and Committee Reports; Preliminary Consideration for Legislative Initiatives-2006 Session; Native Fish Restoration in the Rio Costilla Watershed; Approval of Department FY 07 Operating Budget Request; State Game Commission Approval of Fiscal Year 07 Capital Projects Budget Request for the Department of Game and Fish; Requesting Commission Approval of Non-Profit Organizations for Donations of Hunting Licenses; General Public Comments; and Closed Executive Session to discuss litigation, personnel, and acquisition or disposal of real property or water rights, and pursuant to Section 10-15-1(H)(1), NMSA, 1978, to discuss matters related to the determination of sending "Notice of Commission Contemplated Action" for outfitter and/or guide registration to any unidentified individual(s) that may have violated their professional code of conduct as per 19.30.8, and 19.31.2, NMAC.

The following rules are open for amendment or adoption by the Commission:

* Amend 19.31.8.32, NMAC, Chronic Wasting Disease Control portion of the Big Game Rule to provide authority to the Director to establish control within and adjacent to Game Management Units where Chronic Wasting Disease has been confirmed;

* Amend 19.31.3, NMAC, License Application Rule, regarding Mobility Impaired Certifications to clarify qualification requirements and require periodic recertification; and

* Amend 19.30.5, NMAC, Private Land Elk License Allocation Rule. This amendment will result in a significantly modified rule that addresses equality and fairness surrounding authorization issuance and simplifies the evaluation and authorization distribution process.

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

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 or meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working

days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

NEW MEXICO GAMING CONTROL BOARD

NEW MEXICO GAMING CONTROL BOARD

NOTICE OF HEARING ON AMENDMENTS TO RULE

The New Mexico Gaming Control Board ("Board") will hold a public hearing at 9:00 a.m. on September 20, 2005, at the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113-1736 to consider amendments for the following rules: **15.1.13 NMAC, License and Certification Renewal Requirements Under the Gaming Control Act.**

Copies of the proposed amendments are available on request to the New Mexico Gaming Control Board, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113-1736, or by calling (505) 841-9733. The proposed changes are also available on our website at www.nmgcb.org. The Board can provide public documents in various accessible formats.

The hearing will be held before a hearing officer appointed by the Board. All interested parties may attend the hearing and present their views orally or submit written comments prior to the hearing. Written comments should be directed to the Gaming Control Board, Attn, Legal Division, 4900 Alameda Blvd., N.E., Albuquerque, New Mexico 87113-1736.

If you are an individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, please contact Denise Leyba, Gaming Control Board, at least one week prior to the hearing at (505) 841-9733.

NEW MEXICO DEPARTMENT OF LABOR LABOR AND INDUSTRIAL DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Department of Labor, Labor and Industrial Division will conduct a rule making hearing to consider an amendment to the regulations regarding methods of determining prevailing wage rates. Those current regulations are in the Public Works Minimum Wage Act Policy Manual 11.1.2, NMAC. The PWMWAPM is available on-line at <http://www.nmcpr.state.nm.us/nmac/parts/title11/11.001.0002.htm>. Pursuant to 11.1.2.15 NMAC, written or verbal input from all interested parties will be received. The hearing will be recorded and transcribed. Interested parties may contact Arlene Rodriguez, Commission Administrator at (505) 827-6875 to secure copies of the agenda at least twenty-four hours prior to the meeting. The proposed regulation will be available to interested parties by August 19, 2005 and may be obtained by contacting Ms. Rodriguez at 505-827-6875.

DATE: August 31, 2005
SUBJECT: Amendment to the Public Works Minimum Wage Act Policy Manual
Time: 9:00 am
Place: Plumbers & Steamfitters
Local Union 412
510 San Pedro SE
Albuquerque, NM 87108

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

New Mexico Public Education Department
NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Building, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on September 19, 2005, to obtain input on the following rules:

Rule Number	Rule Name	Proposed Action	Date and Time of Hearing
6.30.6 NMAC (Proposed NMAC No.)	EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS: SUSPENSION OF AUTHORITY OF A LOCAL SCHOOL BOARD, SUPERINTENDENT OR PR INCIPAL (Proposed part name)	Adopt new rule	September 19, 2005 10:00 a.m. - noon
Interested individuals may testify at the public hearing or submit written comments regarding proposed new rule 6.30.6 NMAC to Mary Deets -Jimenez, Administrative Assistant, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501 - 2786 (mdjimenez@ped.state.nm.us) (505) 827-6641(telefax (505) 82 7-6681). Written comments must be received no later than 5:00 pm on September 19, 2005. Copies of the proposed rule may be accessed on the Department's website (http://ped.state.nm.us/) or obtained from Mary Deets -Jimenez. This notice supercedes earlier notices regarding this proposed rulemaking.			
6.12.2 NMAC	HEALTH - IMMUNIZATION OF SCHOOL CHILDREN	Repeal rule	September 19, 2005 1:00 p.m. - 2:30 p.m.
6.12.2 NMAC	Health Services (Proposed Part Name)	Repromulgate rule (will incorporate rulemaking relatin g to immunization of school children, as revised)	September 19, 2005 1:00 p.m. - 2:30 p.m.
6.12.3 NMAC	Health - Acquired Immune Deficiency Syndrome (AIDS)	Repeal rule (revised content will be incorporated in 6.12.2 NMAC)	September 19, 2005 1:00 p.m. - 2:30 p.m.
The Department proposes to repeal the current 6.12.2 NMAC (Health - Immunization of School Children) and repromulgate the rule as 6.12.2 NMAC (Health Services). The repromulgated rule will incorporate the provisions of the current 6.12.2 NMAC, the current 6.12.3 NMAC (Health - Acquired Immune Deficiency Syndrome) as updated; and add new language addressing self -carry for the treatment of asthma and anaphylaxis associated medical conditions. The Department proposes to repeal 6.12.3 NMAC as its upda ted provisions will be incorporated into 6.12.2 NMAC. This notice supercedes earlier notices regarding this proposed rulemaking.			
Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking to Dr. Kristine M. Meurer, Director, School and Family Support Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501 -2786 (kmeurer@ped.state.nm.us) (505) 222-4748 (telefax (505) 827 -1826). Written comme nts must be received no later than 5:00 pm on September 19, 2005.			
Proposed rule 6.12.2 NMAC may be accessed on the Department's website (http://ped.state.nm.us/) or obtained from Doris Sandoval, School and Family Support Bureau, Public Education Departmen t, 120 S. Federal Place, Room 206; Santa Fe, NM 87501 (doris.sandoval@state.nm.us) (505) 827-1804) (telefax (505) 827-1826).			
6.60.9 NMAC	Licensure Requirements, Code of Ethical Responsibility of the Ed ucation Profession	Amend rule	September 19, 2005 3:00 p.m. - 5:00 p.m.
6.60.10 NMAC	Mentorship Programs for Beginning Teachers	Amend rule	September 19, 2005 3:00 p.m. - 5:00 p.m.
6.63.4 NMAC	Licensure in Education Diagnosis	Amend rule	September 19, 200 5 3:00 p.m. - 5:00 p.m.
6.63.7 NMAC	Licensure for School Social Workers, K -12	Amend rule	September 19, 2005 3:00 p.m. - 5:00 p.m.
6.68.2 NMAC	Denial of Applications or Licenses for School Personnel	Repeal and replace rule	September 19, 2005 3:00 p.m. - 5:00 p.m.

6.68.3 NMAC	Suspension or Revocation of a License Held by a Licensed School Individual	Repeal and replace rule	September 19, 2005 3:00 p.m. - 5:00 p.m.
6.69.3 NMAC	Performance Evaluation Requirements for Administrators, Library Media Specialists, and Counselors	Amend rule	September 19, 2005 3:00 p.m. - 5:00 p.m.
6.69.5 NMAC	Performance Evaluation Requirements for Librarians	Adopt new rule	September 19, 2005 3:00 p.m. - 5:00 p.m.
Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking to NAME, TITLE, BUREAU/DIVISION, MAILING ADDRESS, E-MAIL ADDRESS, TELEFAX NUMBER. Written comments must be received no later than 5:00 pm on September 19, 2005.			
The proposed rules may be accessed on the Department's website (http://ped.state.nm.us/) or obtained from NAME, BUREAU/DIVISION/MAILING ADDRESS, E-MAIL ADDRESS/PHONE NUMBER/TELEFAX NUMBER.			

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Mary Deets-Jimenez, Administrative Assistant, Office of General Counsel at (505) 827-6641 as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION**

BEFORE THE
NEW MEXICO
PUBLIC
REGULATION
COMMISSION

IN THE MATTER
OF A NOTICE OF
INQUIRY TO
DEVELOP A RULE
TO IMPLEMENT
HOUSE BILL 776,
RELATING TO
ACCESS CHARGE
REFORM

Case No.
05-00211-UT

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("Commission") proposes to adopt a rule for the implementation and administration of the State Rural Universal Service Fund ("the Fund").

THE COMMISSION FINDS AND CONCLUDES:

1. On April 7, 2005, New Mexico Governor Bill Richardson signed House Bill 776 entitled "An Act Relating to Telecommunications; Amending Sections of the Rural Telecommunications Act of New Mexico to Provide for the State Rural Universal Service Fund." House Bill 776 amends Sections 63-9H-6 and 63-9H-7 of the Rural Telecommunications Act ("Rural Telecom Act"). All citations to the Rural

Telecom Act ("the Act") in this Notice of Proposed Rulemaking are to the amended version of the Act. Section 63-9H-6 — often referred to as the Universal Service Fund statute — requires the Commission to implement a "state rural universal service fund" ("Fund") to maintain and support rural public telecommunications services at affordable rates. NMSA 1978, Section 63-9H-6(A).

2. House Bill 776 amends Section 63-9H-6 for the purpose of reducing intrastate switched access charges to interstate switched access charge levels in a revenue-neutral manner. Switched access charges ("access charges") are charges that local exchange companies ("LECs") charge to long-distance companies for originating and terminating long-distance calls over the LECs' portion of the telecommunications network. Intrastate access charges are imposed for originating and terminating long-distance calls within a state. Interstate access charges are imposed for originating and terminating long-distance calls between states. Historically, access charges have been priced above cost to subsidize local service rates. The effect of the high access charges is that rates for in-state long-distance calls are high. The Federal Communications Commission ("FCC") addressed this problem at the interstate level by lowering access charges and recovering lost access charge revenues through a federal access charge of \$6.50.

3. House Bill 776 follows the FCC model by reducing intrastate access charges to the level of interstate access charges and allowing recovery of lost access charge revenue through a surcharge on intrastate retail telecommunica-

tions services. House Bill 776 directs the Commission to establish benchmark rates for local residential and business services. NMSA 1978, Section 63-9H-6(D)(5). House Bill 776 does not require a LEC whose local rates are below the benchmark rates to raise its local rates to the benchmark rates. However, no LEC can recover lost access charge revenue equal to revenues that can be earned by increasing local rates to the benchmark rates. *See id.*, Section 63-9H-6(K). Thus, the Fund cannot be used to subsidize local rates that are lower than the benchmark rates. Any additional lost access charge revenue not recovered by increasing local rates to the benchmark rates may be recovered from the Fund, which is funded through the surcharge. *See id.*

4. House Bill 776 requires the Commission to:

- a. establish eligibility criteria for participation in the Fund consistent with federal law that ensure the availability of service at affordable rates;
- b. provide for the collection of the surcharge on a competitively neutral basis and for the administration and disbursement of money from the Fund;
- c. provide for the separate administration and disbursement of federal universal service funds consistent with federal law; and
- d. establish affordability benchmark rates for local residential and business services that shall be utilized in determining the level of support from the Fund.

NMSA 1978, Section 63-9H-6(D).

5. House Bill 776 requires

the Commission to adopt rules, including a provision for variances, for the implementation and administration of the Fund no later than November 1, 2005. *Id.*, 63-9H-7(F). The Public Regulation Commission Act authorizes the Commission to "adopt such reasonable regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties." NMSA 1978, Section 8-8-4(B)(10).

6. On May 24, 2005, this Commission initiated this case through issuance of its Notice of Inquiry. The Notice of Inquiry solicited proposed rules to implement House 776 and solicited responses to enumerated questions that are relevant to the adoption of a proposed rule.

7. The following persons filed responses to the Notice of Inquiry: the New Mexico Attorney General; Leaco Rural Telephone Cooperative; the New Mexico Exchange Carriers Group; Qwest Corporation; the New Mexico Wireless Group; and MCI, Inc.

8. Having considered the responses to the Notice of Inquiry and being otherwise fully informed, the Commission has developed a proposed rule — which includes alternatives for certain provisions — that is attached as Exhibit 1 to this Notice of Proposed Rulemaking.

9. The Commission will accept written comments on the rule proposed in this Notice of Proposed Rulemaking — including comments on alternatives where they exist — from any interested person. Interested persons shall file their written comments on the proposed rule no later than August 31, 2005. Any response comments shall be filed no later than September 23, 2005. Comments suggesting changes to the proposed rule 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 proposed rule shall be in legislative format. The Commission invites comments regarding whether the proposed rule is consistent with federal statutes and regulations and whether additional definitions should be added to 17.11.10.7 of the proposed rule. A copy of the proposed rule in electronic format may be obtained from the Commission to facilitate this requirement. Any proposed changes to the proposed rule shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (compact disc in Microsoft 2000 Word format). The label on

the compact disc shall state the name of the person submitting the proposed changes and the docket number of this proceeding (Case No. 05-00211-UT). All pleadings, including comments and suggested changes to the proposed rule, shall bear the caption and docket number contained at the top of this Notice.

10. Written comments or written response comments shall be sent to: Melanie Sandoval
New Mexico Public Regulation Commission
Attention: Proposed Rule Relating to Access Charge Reform
224 East Palace Avenue, Marian Hall
Santa Fe, NM 87501
Telephone: (505) 827-6968

11. Copies of the proposed rule may also be downloaded from the Commission's web site, www.nmprc.state.nm.us, under "Meetings," then "Public Notices."

12. The Commission will review all timely submitted written comments and will hold public comment hearings on the following dates and at the following times and places:

a. August 29, 2005, beginning at 9:30 a.m. at the Albuquerque/Bernalillo Governmental Center, 9th floor, Room 9081, 1 Civic Plaza NW, Albuquerque, New Mexico, corner of 5th Street and Marquette;

b. September 14, 2005, in Gallup, New Mexico. After September 1, 2005, please call Cecilia Rios at 827-4501 or Alice Lucero at 827-6947 for the location and time.

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

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

15. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. The proposed rule, attached to this Notice of Proposed Rulemaking as Exhibit 1, is proposed for adoption as a permanent rule as provided by this Notice.

B. Initial comments on the proposed rule must be filed by August 31, 2005, and response comments must be filed by September 23, 2005.

C. Public comment hearings shall be held as provided in this Notice of Proposed Rulemaking.

D. A copy of this Notice, including Exhibit 1, shall be mailed to all persons listed on the attached Certificate of Service. This Notice, excluding Exhibit 1, shall be published in two newspapers of general circulation in the state and in the *New Mexico Register*. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rule on the Commission's web site.

E. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 28th day of July, 2005.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEN R. LUJAN,
CHAIRMAN

JASON A. MARKS,
VICE-CHAIRMAN

DAVID W. KING,
COMMISSIONER

LYNDA M. LOVEJOY,
COMMISSIONER

E. SHIRLEY BACA,
COMMISSIONER

**NEW MEXICO
DEPARTMENT OF
TRANSPORTATION**

**THE NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

NOTICE OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comment on Rule Number 18.1.6 NMAC, Leasing of Commercial Real Property for Commercial Purposes. The purpose of the proposed rule is to establish procedures for the conduct, permitting or authorization of commercial enterprises or activities on New Mexico

State Transportation Commission or Department of Transportation owned land or land leased to or from the State of New Mexico.

The hearing is scheduled on September 14, 2005, from 9:00 a.m. to 11:00 a.m. at the New Mexico Department of Transportation, General Office, Training Rooms 1 and 2, located at 1120 Cerrillos Road, Santa Fe, New Mexico. Please contact Stephanie Nemett, Office of General Counsel, New Mexico Department of Transportation, P.O. Box 1149, Room 123, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5431 to request a copy of the rule.

The hearing will be held before Andres Aragon Viramonte, NMDOT Deputy Secretary Programs and Infrastructure. Interested persons may also present their views by written statements submitted on or before September 7, 2005, New Mexico Department of Transportation, P.O. Box 1149, Room 123, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-5431.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Stephanie Nemett at (505) 872-5431 at least ten days before the hearing.

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO CULTURAL PROPERTIES REVIEW COMMITTEE

**TITLE 4 C U L T U R A L
RESOURCES
CHAPTER 10 C U L T U R A L P R O P -
ERTIES AND HISTORIC PRESERVA-
TION
PART 14 C U L T U R A L P R O P -
ERTIES ON PRIVATE LAND AND
MECHANICAL EXCAVATION PER-
MITS**

4.10.14.1 ISSUING AGENCY:
Cultural Properties Review Committee.
Contact State Historic Preservation
Division, Department of Cultural Affairs.
[4.10.14.1 NMAC - N, 1/01/06]

4.10.14.2 SCOPE: This rule
applies to all public and private entities,
including but not limited to, individuals,
corporations, partnerships, trusts, associa-
tions, educational institutions, foundations,
museums and any agency of the federal
government excavating or proposing to
excavate, with the aid of mechanical earth-
moving equipment, an archaeological site
on private land.
[4.10.14.2 NMAC - N, 1/01/06]

**4.10.14.3 S T A T U T O R Y
AUTHORITY:** Section 18-6-10 (NMSA
1978) and Section 18-6-11 (NMSA 1978) of
the Cultural Properties Act.
[4.10.14.3 NMAC - N, 1/01/06]

4.10.14.4 D U R A T I O N :
Permanent.
[4.10.14.4 NMAC - N, 1/01/06]

4.10.14.5 EFFECTIVE DATE:
January 1, 2006, unless a later date is cited
at the end of a section.
[4.10.14.5 NMAC - N, 1/01/06]

4.10.14.6 OBJECTIVE: This
rule describes procedures used to assist
owners to preserve cultural properties and
registered cultural properties situated on
privately owned land and the procedures
and standards to excavate an archaeological
site on private land using mechanical earth-
moving equipment.
[4.10.14.6 NMAC - N, 1/01/06]

4.10.14.7 DEFINITIONS:
A. "Agent" means an
individual who is authorized by a written
agreement with a private landowner to act
on behalf of the landowner and who works
under the landowner's personal and direct

supervision.

**B. "Archaeological
investigation"** means the study of archae-
ological sites, isolates and other cultural
properties and areas of historic and scientifi-
c interest including without limitation sur-
vey and inventory, examination, collection,
limited tests, test excavation, excavation
and monitoring.

C. "Archaeological site"
or **"site"** means a location where there
exists material evidence of the past life and
culture of human beings in the state. A sig-
nificant archaeological site typically is 50 or
more years old. Examples of archaeological
sites include without limitation campsites,
pueblos, homesteads, artifact scatters,
resource procurement or processing areas,
agricultural fields, locales with one or more
features in association with other cultural
materials, and locales that have the potential
for subsurface features or cultural deposits.

D. "Committee" or
"CPRC" means the cultural properties
review committee, created pursuant to
Section 18-6-9 of the Cultural Properties
Act.

E. "Cultural property"
or **"cultural resource"** means a structure,
place, site or object having historic, archae-
ological, scientific, architectural or other
cultural significance.

F. "Excavation" means
displacing, disturbing or moving earth, soil,
dirt, other deposits or material remains from
their current contexts or significant orienta-
tion in, or on, the ground within the bound-
aries of an archaeological site, isolate or
area of historic and scientific interest using
hand tools or mechanical earth-moving
equipment.

**G. "Historic preservation
division"** or **"HPD"** means the division
within the department of cultural affairs cre-
ated pursuant to Section 18-6-8A of the
Cultural Properties Act.

H. "Human burial" or
"unmarked human burial" means a
human body or human skeletal remains and
includes any funerary object, material
object or artifact buried, entombed or sepul-
chered with that human body or skeletal
remains.

**I. "Mechanical earth-
moving equipment"** means any motorized
machine or device that is capable of dis-
placing, disturbing or moving earth, soil,
dirt or other deposits or materials from their
current contexts or significant orientation
in, or on, the ground, including without
limitation trenchers, backhoes, graders, scrap-
ers, bulldozers and front-end loaders.

J. "Permit" means the
written authorization required for all public

and private entities to conduct archaeologi-
cal investigations of a particular kind, with-
in a defined geographic location and for a
specified period of time, all of which are
specified in the written authorization.

K. "Preservation" means
sustaining the existing form, integrity, mate-
rial or vegetative cover of a cultural proper-
ty and includes protective maintenance or
stabilization.

L. "Protection" means
safeguarding the physical condition or envi-
ronment of an archaeological site or historic
structure or building from deterioration or
damage caused by weather or other natural,
animal or human intrusions.

**M. "Registered cultural
property"** means a cultural property that
the CPRC placed on the state register indi-
vidually or as a contributing property with-
in a district either on a permanent or tempo-
rary basis

N. "Restoration" means
recovering the general historic appearance
of a cultural property or the form and details
of an object or structure by removing
incompatible natural or human-caused
accretions and replacing missing elements
as appropriate.

O. "State archaeologist"
means the archaeologist designated pur-
suant to Section 18-6-15 of the Cultural
Properties Act.

**P. "State historic preser-
vation officer"** or **"SHPO"** means the indi-
vidual appointed pursuant to Section 18-6-8
of the Cultural Properties Act and serves as
the director of the historic preservation divi-
sion.

Q. "State register" or
"official register" means the New Mexico
register of cultural properties maintained by
the CPRC for the purpose of recording cul-
tural properties deemed worthy of preserva-
tion.

**R. "Unmarked burial
ground"** means a location where there
exists a burial or burials of any human
beings that are not visibly marked on the
surface of the ground in any manner tradi-
tionally or customarily used for marking
burials and includes any funerary object,
material object or artifact associated with
the burial or burials.

[4.10.14.7 NMAC - Rp, 4 NMAC 10.8.7,
1/01/06]

4.10.14.8 PRESERVATION OF CULTURAL PROPERTIES ON PRI- VATE LAND:

A. The CPRC and the
SHPO offer technical assistance to owners
of cultural properties on private land with
the purpose to:

(1) identify and register cultural properties worthy of preservation on the state register;

(2) provide advice to owners interested in the protection, rehabilitation, restoration or maintenance of cultural properties on private land, including but not limited to, state and federal income tax credit programs, the state historic preservation loan fund and conservation easement programs; and

(3) ensure that archaeological investigations on private land meet the highest professional standard; when requested by an owner, the CPRC or the SHPO will review a proposal to conduct archaeological investigations on private land and offer written comments.

B. An owner of a registered cultural property may write to the CPRC accepting registration of the cultural property. This acceptance of registration may also state that the owner wishes pursuant to Section 18-6-10 of the Cultural Properties Act to place the cultural property under the protection of Section 18-6-9 of the Cultural Properties Act. The SHPO shall advise the county or municipality within which the cultural property is located of the benefits of zoning the property as a historic area or district and the applicability of relevant state laws.

C. If evidence of a human burial or unmarked human burial ground is discovered on private land, local law enforcement shall be notified pursuant to 4.10.11 NMAC. The state archaeologist provides technical assistance to landowners on notification and protection.

[4.10.14.8 NMAC - N, 1/01/06]

4.10.14.9 PROCEDURES FOR

A MECHANICAL EXCAVATION PERMIT: The CPRC issues, with the concurrence of the state archaeologist and the SHPO, permits to use mechanical earth-moving equipment in the excavation of an archaeological site on private land when a public or private entity other than the landowner or the agent of the landowner proposes to conduct excavation.

A. For purposes of this rule, the CPRC or the SHPO may require an individual who purports to be a landowner's agent to provide a copy of the written agreement with the landowner indicating that the individual is authorized to act on the behalf of the landowner, and that the individual works or will work under the landowner's personal and direct supervision. The CPRC or the SHPO may request additional information from the landowner or the individual regarding the individual's authority and the landowner's right to control the individual's activities. The CPRC and the SHPO will use all this information to determine whether the relationship between the

landowner and the individual who is using or will be using mechanical earth-moving equipment to excavate on private land, is one of principal and agent.

B. The applicant may obtain mechanical excavation permit application forms and instructions for filing the application and attachments from HPD's website or may request them from HPD. The application shall contain the following information:

(1) applicant name, mailing address, telephone number and email address; and

(2) signature of the applicant, title of the applicant and date, which may be submitted with original signature, signature transmitted by facsimile, or if the forms are sent by electronic mail, the permittee's electronic mail address shall serve as the signature; by virtue of the submission of the application, the applicant certifies agreement to abide by all the rules, terms and conditions of the permit.

C. The applicant shall complete the application and attachments and provide the following items consistent with the instructions provided by HPD:

(1) written authorization from the owner of the land on which the archaeological site is located;

(2) a research design consistent with the standards in 4.10.16 NMAC or a discussion of the proposed excavation project including a description of the site, the objectives of the excavation and the methods to be used to achieve the objectives;

(3) a staff roster that lists the names of supervisory personnel who will be acting or expected to act in the capacities of principal investigator, project director, field supervisor and crew chief during the permitted excavation and who meet the qualifications by position in 4.10.8.10 NMAC; indicate on the staff roster those supervisory personnel who are listed in the SHPO directory of qualified supervisory personnel (4.10.8.11 NMAC); for supervisory personnel who are not in the SHPO directory, provide a curriculum vitae and chart of experience that demonstrate qualifications consistent with 4.10.8.10 NMAC;

(4) a written acknowledgment by the applicant that the permittee shall submit to a final report on the results of the excavation to the CPRC; and

(5) an estimated date of completion for a final report on the results of the excavation.

D. An approved application shall list special stipulations imposed by the CPRC, if any, and shall list the term of the permit and the permit number; the term of the permit shall be one year from the date of approval by the CPRC unless the applicant proposes a later date that is

approved by the CPRC.

E. An approved application shall have the signature of the chair of the CPRC indicating approval of the permit and signatures of the state archaeologist and the SHPO indicating their concurrence with the issuance of the permit.

[4.10.14.9 NMAC - Rp, 4 NMAC 10.8.12, 1/01/06]

4.10.14.10 REVIEW AND APPROVAL OF APPLICATIONS:

A. HPD shall receive permit applications including attachments and maintain current files for each individual or firm who has a mechanical excavation permit.

B. HPD shall review all information submitted in support of the application for completeness, accuracy, and conformance with all qualifying requirements. When requested, the applicant shall remedy any inaccuracies or inadequacies specified by HPD before further review or processing of the permit application proceeds. HPD shall submit all completed applications for consideration at the next scheduled CPRC meeting. HPD may recommend to the CPRC that an application be tabled or rejected if the applicant fails to meet minimum qualifying criteria either upon initial receipt or through failure to respond adequately to a request for information.

C. The CPRC shall review and consider all completed applications for approval, approval with special stipulations, or denial, with the concurrence of the state archaeologist and the SHPO. The CPRC may table applications to be discussed at a future meeting pending receipt of additional information necessary to make a decision on the permit.

D. Any special stipulations attached to a permit by the CPRC, the state archaeologist, or the SHPO shall be specified in writing on the permit.

E. HPD shall notify the applicant in writing of the approval, approval with stipulations or denial of the permit by CPRC, with the concurrence of the state archaeologist and the SHPO.

F. Any applicant who has been denied a permit by the CPRC, the state archaeologist, or the SHPO shall have the right to appeal the decision pursuant to 4.10.8.25 NMAC.

[4.10.14.10 NMAC - Rp, 4 NMAC 10.8.12, 1/01/06]

4.10.14.11 MECHANICAL EXCAVATION PERMIT STIPULATIONS:

A. Permittees shall abide by all stipulations contained in this rule and any special stipulations imposed by the CPRC, the state archaeologist, the SHPO or

the owner of the land on which the site is located. These additional stipulations shall be set out in writing on the permit.

B. Permittees shall determine the land status and ownership of the archaeological investigation to insure the work will not be in trespass and that they are in compliance with local, state or federal laws.

C. All costs incurred in the execution of the activities conducted under a permit shall be borne by the permittee or its client.

D. The permittee shall comply with all laws, rules, ordinances and requirements in all matters and things affecting the premises and operations therein pertaining to the permit, archaeological site and the land where the site is located.

E. All activities conducted under the permit shall be carried out so as to prevent erosion of the land, pollution of water resources and any other damage to the natural environment. Any sites or locations, which are disturbed in the course of the archaeological investigations conducted under the permit, shall be restored to their original condition insofar as possible. The areas of limited tests, test excavations and excavation shall be backfilled. All areas examined under the permit shall be left in a state that will not create hazard to life nor endanger livestock or other property, nor contribute to the deterioration of the site or location or adjacent lands by natural forces, unless other provisions are specifically arranged in the permit application.

F. If human burials are discovered during the excavation, local law enforcement shall be notified pursuant to 4.10.11 NMAC. If the human burial cannot be left in place, excavations shall be carried out in conformance with 4.10.11 NMAC.

G. All material remains collected or removed from the site as a result of the excavation conducted under the permit shall be the property of the owner of the land on which the site is located, with the exception of unmarked human burials and any funerary object, material object or artifact buried, entombed or sepulchered with the human burial or burials, which shall be the subject of consultation in accordance with 4.10.11 NMAC. The permittee may encourage the landowner to dispose of the material remains in such a way that the general public may benefit, for example, through the donation of the material remains to a public institution that curates such material.

H. If the excavation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period, the permittee shall notify HPD in writing to request an extension to the term of the permit. This request shall be

received by HPD within ten (10) working days prior to the expiration date of the permit in order to be considered. The request for the extension shall be accompanied by an interim report summarizing the excavations completed at that date and a proposed date when the excavations will be completed and when the final report will be submitted.

I. If the archaeological investigation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify HPD in writing to request a cancellation of the permit. Disposition of material remains collected under the permit and copies of all written and photographic records resulting from a discontinued investigation will be in accordance with the provisions of this section.

J. If fieldwork has not been initiated within the permit period or an extension has not been requested, the permit shall become void at the end of the permit period.

K. Failure by a permittee to comply with the standard or special stipulations set forth in this rule and on the permit may be cause for the CPRC's denial of future permits to the permittee in conformance with 4.10.8.24 NMAC.

[4.10.14.11 NMAC - Rp, 4 NMAC 10.8.12, 1/01/06]

4.10.14.12 STANDARDS FOR THE USE OF MECHANICAL EQUIPMENT: All permitted excavations using mechanical equipment shall conform to the following standards.

A. Mechanical excavation units may be used to define stratigraphy, locate subsurface features and cultural deposits and remove sterile overburden. Depths for mechanical excavation trenches shall conform to OSHA standards for excavation safety (29 CFR 1926, Subpart P).

B. Collect surface artifacts prior to excavation of trenches or stripping or scraping areas with mechanical earth-moving equipment.

C. For each mechanical excavation trench:

(1) document the location, depth, soil profile, artifact yield and other pertinent information;

(2) clean at least one profile with a shovel or trowel and inspect the profile for material remains;

(3) document the profile in narrative, profile drawing and photographs;

(4) examine the excavated area after the removal of each extracted bucket load; and

(5) examine back dirt for the presence of artifacts.

D. Mechanical stripping or scraping may be employed following hand

excavations or mechanical trenching. The stripping serves the purpose of disclosing features that were not found during the testing, trenching or excavation and provides a check on the reliability of the excavation sampling design. Features exposed during the mechanical stripping shall be mapped in relation to the site datum. All features shall be fully excavated if of a new type and do not represent redundant information and shall be fully described. Sufficient studies shall be performed to interpret function.

[4.10.14.12 NMAC - N, 1/01/06]

4.10.14.13 REPORTING STANDARDS:

A. Within 60 days of the completion of the excavations, the permittee shall submit to HPD one copy of a preliminary report on the results of the excavation including relevant maps, drawings, photographs and other documents.

B. A final report on the excavations shall be submitted to HPD within one year of the completion of the excavations or the date proposed in the application and approved by the CPRC. If HPD has not received a copy of the report within the permit period, HPD shall contact the permittee. If the excavations are part of a larger project that includes sites on state land, the final report shall be prepared consistent with 4.10.16 NMAC.

C. All reports shall be reviewed by HPD for technical accuracy and completeness.

(1) If HPD review reveals that the proposed investigations were not completed consistent with the application and stipulations contained on the approved permit, HPD will notify the permittee of the deficiencies and request that the permittee amend the report to correct the deficiencies and resubmit the report.

(2) Failure by the permittee to conduct the permitted investigation according to standards or stipulations or to submit required reports in a timely manner or to amend report deficiencies as identified by HPD shall be documented as unacceptable performance pursuant to 4.10.8.21 NMAC.

[4.10.14.13 NMAC - Rp, 4 NMAC 10.12, 1/01/06]

4.10.14.14 DEVIATIONS: The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.14.14 NMAC - N, 1/01/06]

HISTORY OF 4.10.14 NMAC:

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

CPRC 82-R1, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 5-28-82.

CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 3-26-87.

History of Repealed Material: Rule 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97), repealed 1/01/06.

Other History:

CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 3-26-87) was renumbered and reformatted to 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, effective 11/15/97.

That applicable portion of Rule 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97) was renumbered, reformatted and replaced by 4.10.14 NMAC, Cultural Properties on Private Land and Mechanical Excavation, effective 1/01/06.

NEW MEXICO CULTURAL PROPERTIES REVIEW COMMITTEE

TITLE 4 C U L T U R A L RESOURCES CHAPTER 10 C U L T U R A L P R O P - ERTIES AND HISTORIC PRESERVA- TION PART 15 S T A N D A R D S F O R SURVEY AND INVENTORY

4.10.15.1 ISSUING AGENCY:
Cultural Properties Review Committee.
Contact State Historic Preservation
Division, Department of Cultural Affairs.
[4.10.15.1 NMAC - N, 1/01/06]

4.10.15.2 SCOPE: This rule
applies to all public and private entities,
including but not limited to, individuals,
corporations, partnerships, trusts, associa-
tions, educational institutions, foundations,
museums and any agency of the federal
government conducting or proposing to
conduct archaeological investigations on
any lands owned, controlled or operated by
the state of New Mexico.
[4.10.15.2 NMAC - N, 1/01/06]

**4.10.15.3 S T A T U T O R Y
AUTHORITY:** Section 18-6-5 (NMSA
1978) of the Cultural Properties Act.
[4.10.15.3 NMAC - N, 1/01/06]

4.10.15.4 D U R A T I O N :
Permanent.
[4.10.15.4 NMAC - N, 1/01/06]

4.10.15.5 EFFECTIVE DATE:
January 1, 2006, unless a later date is cited
at the end of a section.
[4.10.15.5 NMAC - N, 1/01/06]

4.10.15.6 OBJECTIVE: This
rule describes procedures and standards to
conduct surveys to identify, record and
evaluate archaeological sites, isolates, other
cultural properties and areas of historic and
scientific interest on lands owned, con-
trolled or operated by a department, agency,
institution or political subdivision of the
state.
[4.10.15.6 NMAC - N, 1/01/06]

4.10.15.7 DEFINITIONS:

**A. "Archaeological
investigation"** means the study of archaeo-
logical sites, isolates and other cultural
properties and areas of historic and scientifi-
c interest including without limitation sur-
vey and inventory, examination, collection,
limited tests, test excavation, excavation
and monitoring.

**B. "Archaeological
records management section"** or
"ARMS" means the entity within the his-
toric preservation division that maintains, in
cooperation with the museum of Indian arts
and culture-laboratory of anthropology
(MIAC), the statewide archaeological and
cultural properties databases and associated
records and documents pursuant to Section
18-6-7A of the Cultural Properties Act.

C. "Archaeological site"
or "site" means a location where there
exists material evidence of the past life and
culture of human beings in the state. A sig-
nificant archaeological site typically is 50 or
more years old. Examples of archaeological
sites include without limitation campsites,
pueblos, homesteads, artifact scatters,
resource procurement or processing areas,
agricultural fields, locales with one or more
features in association with other cultural
materials, and locales that have the potential
for subsurface features or cultural deposits.

**D. "Area of potential
effect"** or "APE" means the geographic
area or areas within which an undertaking
may directly or indirectly cause changes in
the character or use of a cultural property.
The APE is influenced by the scale and
nature of an undertaking and is different for
different kinds of effects caused by the
undertaking. For archaeological sites the

APE typically includes all areas involving
ground disturbance but may also include
areas adjacent to the disturbance that may
be indirectly affected as a consequence of
the undertaking. For aboveground historic
buildings, structures and other cultural
properties, the APE often extends beyond
the limits of ground disturbance and
includes visual, vibratory and noise impacts
to a building, structure, site, district, or cul-
tural landscape and its setting and view-
shed. Variation in topography, vegetation,
and contemporary land use influences the
visual impact on cultural properties.

**E. "Areas of historic and
scientific interest"** means areas lacking
surface evidence of cultural properties but
where there is a high probability of finding
subsurface material remains and cultural
deposits or areas suitable for geomorpho-
logical or paleoenvironmental study.

F. "Buffer area" means
an area extending 500 meters or 1000
meters in every direction of the edge of the
APE or project area.

G. "Collection" means the
removal of material remains from state
land, whether or not the remains are located
within an archaeological site or isolate as
defined herein.

H. "Cultural landscape"
means a geographic area including both cul-
tural and natural resources associated with
a historic event, activity or person or exhibi-
ting other cultural or aesthetic values.
Landscapes include formally designed land-
scapes, vernacular landscapes, sites and
ethnographic landscapes.

I. "Cultural property"
or "cultural resource" means a structure,
place, site or object having historic, archaeo-
logical, scientific, architectural or other
cultural significance.

J. "Excavation" means
displacing, disturbing or moving earth, soil,
dirt, other deposits or material remains from
their current contexts or significant orienta-
tion in, or on, the ground within the bound-
aries of an archaeological site, isolate or
area of historic and scientific interest using
hand tools or mechanical earth-moving
equipment.

**K. "Historic preservation
division"** or "HPD" means the division
within the department of cultural affairs cre-
ated pursuant to Section 18-6-8A of the
Cultural Properties Act.

**L. "Historic structures
and buildings"** means structures or build-
ings that are 50 or more years old or prop-
erties less than 50 years old that either meet
the requirements of national register criteria
consideration G (properties that have
achieved significance within the past 50
years) or properties that are likely to meet
the integrity and significance criteria in 30
CFR 60.4 within 5 years of the date of

recording.

(1) A historic structure is an engineered construction created principally for the conveyance of water, natural resources, railroad stock or automobiles and trucks; or an engineered construction created principally for the extraction, refinement and distribution of natural resources; or an engineered construction created principally to support a function other than human shelter. Structures include but are not limited to vehicular bridges, railroad bridges, engineered roads and highway, tunnels, dams, canals, turbines, pipelines, refineries, stamp mills, smelters, dams, power plants, silos, grain elevators or locomotives.

(2) A historic building is a construction created principally to shelter any form of sustained or temporary human activity; or a functional construction created principally to provide shelter for goods, animals, machinery or instrumentation. Buildings include but are not limited to houses, barns, stables, sheds, garages, warehouses, courthouses, city halls, social halls, commercial buildings, libraries, factories, mills, train depots, motels, theaters, schools, stores or churches.

M. "Human burial" or **"unmarked human burial"** means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

N. "Intensive survey" means a visual inspection conducted on foot that examines, identifies, records, evaluates and interprets all surface-visible cultural properties 50 or more years old located in an APE or project area.

O. "Interpretation" means the inventory, registration, mapping and analysis of cultural properties and public educational programs designed to prevent the loss of cultural properties.

P. "Isolate" means a single object or artifact or a few artifacts greater than 50 or more years old that lack clear association. Examples of isolates include a single flake, projectile point, potsherd, sherds from a single broken pottery vessel, pieces of glass from a single bottle or a single feature that lacks integrity.

Q. "Items of cultural and religious significance" means ceremonial or cultural items, such as funerary objects, sacred objects, and objects of cultural patrimony.

R. "Limited tests" means the systematic placement of probes, cores, shovel tests or similar tests using hand tools. Limited tests are conducted during survey to augment survey-level information on an archaeological site or isolate without substantially damaging or diminishing the

integrity of the archaeological site. The total surface disturbance resulting from the limited tests shall not exceed five one-hundredths percent (.05%) of the area of the site surface.

S. "Material remains" means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

T. "Mechanical earth-moving equipment" means any motorized machine or device that is capable of displacing, disturbing or moving earth, soil, dirt or other deposits or materials from their current contexts or significant orientation in, or on, the ground, including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

U. "Monitoring" means the presence of and visual inspection by a supervisory archaeologist on the ground immediately prior to and during ground-disturbing actions to ensure site protection, avoidance of site deposits or recovery of information from newly discovered cultural properties.

V. "Museum of Indian arts and culture-laboratory of anthropology" or **"MIAC"** means the museum division within the department of cultural

affairs, museum of New Mexico, that serves as the repository for archaeological materials and associated records and documents taken or collected from state land.

W. "National register of historic places" or **"national register"** means the official federal register of historic properties maintained by the U.S. department of the interior, national park service.

X. "New Mexico cultural resource information system" or **"NMCRIS"** means the statewide archaeological and cultural properties database maintained by ARMS.

Y. "Permit" means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time, all of which are specified in the written authorization.

Z. "Preservation" means sustaining the existing form, integrity, material or vegetative cover of a cultural property and includes protective maintenance or stabilization.

AA. "Project area" means the geographic area or areas of study for an archaeological investigation conducted for research purposes.

BB. "Registered cultural property" means a cultural property that the CPRC placed in the state register individually or as a contributing property within a district either on a permanent or temporary basis.

CC. "Sample survey" means a pedestrian survey that identifies all surface-visible cultural properties within defined sample units of a larger whole.

DD. "State agency" means a department, agency, institution or political subdivision of the state.

EE. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 of the Cultural Properties Act.

FF. "State historian" means the historian designated pursuant to Section 18-6-14 of the Cultural Properties Act.

GG. "State historic preservation officer" or **"SHPO"** means the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act and serves as the director of the historic preservation division.

HH. "State land" means property owned, controlled, or operated by a department, agency, institution or political subdivision of the state. Examples of state land, include but are not limited to: state trust lands managed by the commissioner of public lands; New Mexico department of transportation rights of way and easements; state parks; state monuments; state game

and fish lands; county and municipal property including open space areas, leased lands, and rights of way; and lands owned or managed by public schools and state colleges and universities.

II. "State register" or "official register" means the New Mexico register of cultural properties maintained by the CPRC for the purpose of recording cultural properties deemed worthy of preservation.

JJ. "Survey" means a visual inspection of land to examine, identify, record, evaluate and interpret cultural properties and may include limited tests but shall not include excavation or test excavation.

KK. "Test excavation" means the systematic placement of probes, cores, shovel tests or test pits using hand tools, and test trenches excavated by hand or with mechanical earth-moving equipment to expose geomorphological soils and buried cultural deposits to determine the research potential and nature and extent of cultural deposits at an archaeological site without substantially damaging or diminishing the integrity of the archaeological site. The total surface disturbance resulting from test excavation shall not exceed 5 percent of the surface area of the site area or 5 percent of the portion of the site that may be affected by an undertaking or project, whichever is less.

LL. "Thematic survey" means a pedestrian survey that identifies selected types of cultural properties and may be performed with written concurrence of the state agency.

MM. "Traditional cultural places" means a geographic place or area of cultural or religious importance to an Indian tribe or pueblo or other ethnic group. Traditions include beliefs, customs and practices of a living community of people that have been passed down through the generations.

NN. "Tribal consultation" means formal discussion between a state agency and Indian tribes and pueblos that may have knowledge of and interest in the general area of an archaeological investigation to assist in identification and protection of traditional cultural places and items of cultural and religious significance.

OO. "Unmarked burial ground" means a location where there exists a burial or burials of any human beings that are not visibly marked on the surface of the ground in any manner traditionally or customarily used for marking burials and includes any funerary object, material object or artifact associated with the burial or burials. [4.10.15.7 NMAC - N, 1/01/06]

4.10.15.8

TYPES OF SUR-

VEYS AND PERMITS: Surveys are conducted to identify, record, evaluate and interpret cultural properties and to relocate, update records and evaluate previously identified cultural properties including but not limited to archaeological sites, historic structures and buildings, isolates and other properties of cultural, historic and scientific interest. Management and research objectives determine the survey intensity, design and methods. Surveys may employ predictive models to assist in developing survey strategies. Geomorphological studies are helpful and suggested when there is a likelihood of deeply buried archaeological sites.

A. General permits. All surveys on state land performed under a general permit obtained pursuant to 4.10.8 NMAC shall be intensive surveys and shall be performed in conformance with 4.10.15.11 NMAC.

B. Project-specific permits. Sample, thematic and other types of surveys on state land are performed under a project-specific permit obtained pursuant to 4.10.8 NMAC and implemented in accordance with the approved research design prepared in conformance with 4.10.15.9 NMAC.

[4.10.15.8 NMAC - N, 1/01/06]

4.10.15.9 P R E - F I E L D REQUIREMENTS:

A. Obtain a general permit or project-specific permit authorizing survey pursuant to 4.10.8 NMAC prior to commencement of work.

B. Conduct a literature and files search to identify the type, location and distribution of previously recorded cultural properties; to gather information on past surveys and other investigations; to identify current research issues pertinent to the project; and to identify factors such as geomorphological conditions that may affect site integrity or visibility. The scale of the literature review and records check shall be appropriate to the complexity and scale of the survey project.

(1) Identify and review literature pertinent to the project including but not limited to statewide and regional cultural-historical overviews and historic contexts, research designs, published archaeological, ethnographic and historical monographs and articles, cultural resource management technical reports, field reports (both positive and negative survey reports) and historic maps and records. Most archaeological reports are available from ARMS. Other federal and state agencies maintain pertinent archives and records.

(2) Review records and files including but not limited to:

(a) query the NMCRIS database and map server to identify previously recorded sites and previous archaeological

investigations located in the APE or project area and in the buffer area extending 500 meters in every direction from the edge of the APE or project area; extend the buffer to 1000 meters in every direction from the edge of the APE or project area if the 500-meter search fails to identify the presence of previously recorded sites; query the NMCRIS database to identify additional surveys that may be in the APE or project area and buffer area that could be missing from the map server coverage (contact ARMS for assistance); append a copy of the NMCRIS map server map to the final report and mark the map search as confidential and not subject to general distribution;

(b) obtain appropriate copies of paper laboratory of anthropology (LA) archaeological site records for all sites in the APE or project area or likely to be in the APE or project area; for sites recorded after January 1994, information in the NMCRIS database supplemented by copies of the site narrative section of the LA archaeological site record and the site map may be used in lieu of obtaining a complete copy of the LA archaeological site record(s); do not obtain copies for sites in the 500-meter or 1000-meter buffer area unless there is a likelihood that the site boundaries may extend into the APE or project area;

(c) review national and state register property files maintained by HPD to determine whether properties listed in the national or state registers are present in the APE or project area; obtain copies of nominations for all state or national register properties that may be directly or indirectly affected by the project; HPD provides assistance in locating these records;

(d) examine historic cultural properties inventory (HCPI) forms, formerly known as historic building inventory (HBI) forms, to determine if any buildings, structures or other cultural properties are located within the APE or project area. HPD provides assistance in locating these records; and

(e) review additional documents and records, such as engineering records or historic documents, the historic architectural building survey/historic architect and engineering records (HABS/HAER) documents, when appropriate; contact the state agency and the archaeologist at the agency, if it has one, to see if additional records are required.

C. Review archival sources to identify historic structures, buildings and other cultural features and to determine historic land use practices and types of resources likely to be identified during the project, as appropriate to the scale and complexity of the project and the types of resources expected. Sources include but are not limited to general land office surveys or land grant survey plats; state land office

lease records, county deeds and abstracts; Sanborn fire insurance maps; probate, tax and judicial records; and Spanish and Mexican archives at the state records center and archives.

D. If the file search reveals that the APE or project area or portion of the APE or project area has been previously surveyed and the survey or surveys were conducted more than 10 years ago, request a determination on whether a new survey will be required. Submit requests by letter, electronic mail or facsimile to the state agency or agencies if the state agency has an archaeologist or to HPD if the state agency does not have an archaeologist. The state agency or HPD will base its determination on a review of the field methods used, the results of the survey, the completeness of documentation, the stability of the geomorphological surface and any other pertinent factors that inform on whether the prior survey is consistent with the identification and documentation standards in this rule. HPD will provide a written determination within 10 working days of the request.

E. The permittee shall contact the state agency to incorporate results of tribal consultation as it may affect the survey pursuant to current state policy on consultation and repatriation.

[4.10.15.9 NMAC - N, 1/01/06]

[The NMCRIS map server may not be complete and up-to-date for all surveys, archaeological sites or state and national register properties. Check all appropriate files and databases to ensure a complete pre-field records search. Contact ARMS or HPD for assistance or more information. Not all information on the LA archaeological site record is included in the database. Obtain copies of the LA archaeological site record for the most complete information for the site.]

4.10.15.10 INTENSIVE SURVEY STANDARDS: Intensive surveys performed on state land shall be conducted in accordance with the following specifications. The state agency with jurisdiction may specify additional requirements and standards that meet or exceed the following specifications. All work shall be performed under the general supervision of individuals listed in the SHPO directory of qualified supervisory personnel (4.10.8.11 NMAC). All fieldwork shall be performed under the direct supervision of an archaeologist listed in the SHPO directory unless the properties recorded consist primarily of historic structures and buildings (see 4.10.15.12 NMAC). The supervisor in the field is responsible for assessing field conditions, altering field methods such as decreasing survey interval, making collections or con-

ducting limited tests, and determining when slope, vegetation or other factors affect field conditions. Document these conditions and specific methods used during the survey in the survey report.

A. Survey area. Conduct a comprehensive, systematic, pedestrian survey of the APE or project area to identify, document and record all cultural properties including archaeological sites, historic structures and buildings, isolates and other properties of historic and scientific interest 50 or more years old that may be reasonably detected from the surface or which are exposed in profiles. Record historic structures and buildings less than 50 years old that may be eligible for the state or national registers within 5 years of the date of the survey. Identify and record properties that meet the requirements of national register criteria consideration G (properties that have achieved significance within the past 50 years).

B. Survey interval and transect width. Transect width for surveys shall not exceed 15 meters and shall be contiguous with no uninventoried areas left between transects. Intervals shall be reduced when surface visibility is poor. The terrain, vegetative cover and the nature of cultural properties influence transect width and intensity of survey coverage. For linear projects the minimum width of the APE or project area is 15 meters.

C. Survey velocity. The amount of area surveyed including recording time should not exceed a rate of 30 acres per person per eight hours of survey calculated for the survey project as a whole and not daily. Terrain and the number and complexity of cultural resources influence survey velocities. When survey velocities are greater than this standard, include an explicit explanation in the survey report. HPD and the state agency with jurisdiction will evaluate the explanation and results of the survey and may request that the survey or portion of the survey be reinventoried if the justification is inadequate.

D. Items of cultural and religious significance. If these items are encountered during a survey, they may be recorded. The permittee shall not disturb these items in any way.

E. Human burials. If a human burial or unmarked burial ground is encountered during survey, notify the local law enforcement agency pursuant to 4.10.11.8 NMAC. Do not disturb the human burial or unmarked burial ground in any way.

F. Survey visibility.
(1) Halt survey if falling precipitation (rain, snow, hail or freezing rain) exceeds trace amounts for any length of time. Do not conduct survey if fallen snow

impairs ground visibility. Ground visibility is considered impaired if more than 20 percent of total ground surface is covered by snow.

(2) In areas with dense, continuous vegetative cover, shovel tests, augers, probes or small excavation tests may be necessary to identify cultural properties. The supervisory archaeologist shall document areas with reduced visibility and, if tests are conducted, document areas of the tests, on the project field map and through photographs, and discuss in the survey report.

(a) Place shovel tests, augers, probes or small excavation units in a systematic pattern at an interval not to exceed 15 meters.

(b) Shovel tests shall be approximately 30 cm in diameter.

(c) Limited test excavation units shall be 50 cm by 50 cm in size.

(d) Shovel tests and limited test excavation units typically should be excavated to a minimum depth of 30 cm or to the depth of cultural materials whichever is less.

(e) Sediments removed from all limited test units shall be passed through a screen of no greater than one-quarter inch (6.35mm).

G. Alternate inventory procedures. In some circumstances a state agency including municipalities and counties may propose an alternate method to the standards in this section to survey and inventory cultural properties in the APE or project area. The proposal shall be submitted in writing to HPD and shall provide a detailed description of the alternate methods proposed and justification. HPD shall review and provide written comments on the proposal within 10 calendar days of receipt. Alternate procedures require consensus between the state agency and HPD prior to implementation.

[4.10.15.10 NMAC - N, 1/01/06]

4.10.15.11 RECORDING ARCHAEOLOGICAL SITES DURING SURVEY:

A. Record all archaeological sites located within the project area and include the portions of sites that extend outside of the APE or project area if the entirety of the site lies on state land. If a portion of the site lies on land not owned, controlled or operated by a state agency, the portion on state land shall be recorded. If permission for access can be obtained from the owner of the remaining portion of the site, record the entire site. If permission cannot be obtained from the owner of the remaining portion of the site, document observations about features outside of, but visible from the APE or project area.

B. If large sites extend outside the APE or project area, record all features and artifacts within and immediately adjacent to the APE or project area and make observations about features outside of but visible from the project area. Incorporate observations made by previous recorders regarding the sites and how those observations relate to the part of the site recorded during the current project.

C. Document all archaeological sites on an LA archaeological site record form consistent with this section and the NMCRIS *guidelines for submitting archaeological records*, July 1993, available from the ARMS website <http://pot-suii.arms.state.nm.us/>. Additional forms may be used at the discretion of the permittee. The LA archaeological site record shall be typed or word-processed. Complete the following fields except for SHPO consultation.

(1) Identification and ownership. Include LA number, site name(s), other site numbers(s), agency assigning number, current site owner(s) and site update.

(2) Recording information. Include the NMCRIS number, field site number, site marker, recorder(s), agency, recording date, site accessibility, surface visibility, remarks, recording activities, description of analysis or excavation activities, photographic documentation, surface collections, records inventory, repository for original records and repository for collected artifacts.

(3) Condition. Include archaeological status (surface collection, test excavation, partial excavation, complete excavation), source of disturbance, vandalism, percentage of site intact and observations on site condition.

(4) Recorder recommendations. Include national register eligibility and criteria, basis for the recommendation, assessment of project impacts and treatment recommendations.

(5) SHPO consultation for use by SHPO and agency or sponsor. Leave section blank.

(6) Location. Identify source graphics; map-based or global position system-based (GPS) coordinates to 10-meter accuracy; directions to site; town, county and state; USGS 7.5-minute (1:24,000) topographic quadrangle name, date and code; public land survey system (PLSS) unplatted or township, range, section, quarter-section to nearest 40-acre unit and protraction. Indicate if PLSS is protracted.

(7) Physical description. Include site dimensions, basis for dimensions, site area, basis for area, site boundaries, depositional and erosional environment, stratigraphy and depth of archaeological deposits, estimated depth of deposits, basis for depth determinations, observations on subsurface

archaeological deposits, local vegetation, vegetative community, topographic location and observations on site setting.

(8) Assemblage data. Include assemblage content for lithics, prehistoric ceramics, historic artifacts and other artifacts and materials, assemblage size by artifact class, dating potential and assemblage remarks including description of assemblage.

(9) Cultural and temporal affiliation(s). Include total number of components defined and the following information for each component: cultural affiliation, basis for temporal affiliation, period of occupation, beginning and ending dates, dating status, basis for affiliation, component type and remarks.

(10) Feature data. Include feature type, reliability of identification, number observed, associated component number, feature identification number(s), notes and remarks.

(11) References. Include written sources of information and additional sources of information.

(12) Narrative site description. Provide a complete description of the site, features and assemblages and interpretation of the site, features and intrasite proveniences. This information provides the basis for site evaluation and future nomination of the site to the state or national registers.

(13) Site record attachments. Append a copy of 7.5-minute (1:24,000) topographic quadrangle scale with the location of the site, the site sketch map or site plan, continuation forms and any other materials.

D. Newly recorded sites.

(1) Complete all data items within every section of the LA archaeological site record.

(2) Prepare a detailed site plan map for each newly recorded site located during the survey. The map may be a scaled sketch map or an instrument-generated map. Each map shall display:

- (a)** LA number;
- (b)** north arrow (indicate if true north and/or magnetic north);
- (c)** map scale and scale bar;
- (d)** key that identifies all symbols used on the map;
- (e)** site boundary (indicate whether the boundary is complete or incomplete);
- (f)** features, feature numbers, the distribution of artifacts and artifact concentrations;
- (g)** site datum (indicate whether the datum is temporary or permanent);
- (h)** collection and limited test units, if any;
- (i)** photographic points;
- (j)** natural features such as

drainages, rock outcrops, vegetation patterns and other noncultural manifestations within or adjacent to the site and topography as represented by estimated contour lines;

(k) boundary of the APE or project area relative to the site or distance and direction to the project if the site is away from areas of ground disturbance;

(l) cultural or natural landmarks within or adjacent to the site (such as roads, fences, buildings, benchmarks);

(m) location and extent of any vandalized or disturbed areas of the site; and

(n) the name of the map artist(s), institutional affiliation and date the map was drawn.

E. Previously recorded sites.

(1) Review and update the information obtained during the pre-field files check pursuant to 4.10.15.9 NMAC consistent with the standards set forth below. Special attention shall be paid to changes in physical description and assemblage data resulting from natural or cultural modifications to the site since the last site visit.

(a) If an archaeological site has been documented on an LA archaeological site record since January 1994 and all data items in all sections of the form are complete and accurate, check the site update box and complete the identification and ownership, recording information, condition and recommendations sections.

(b) If an archaeological site has been documented on an LA archaeological site record since January 1994 but some information is incomplete or incorrect, update the incomplete or incorrect sections and clearly differentiate observations made during the current survey from observations made by previous recorders. Check the site update box and complete the identification and ownership, recording information, condition, recommendations and narrative site description sections. Summarize changes and updates in the narrative site description section.

(c) If the site was recorded prior to January 1994 and has not been updated since that time, complete all fields of the current version of the LA archaeological site record. Note any changes in condition or content from the earlier field recording.

(d) If the previously recorded site cannot be relocated, check the site update box on the LA archaeological site record and complete the identification and ownership, recording information, condition, recommendations and narrative site description sections. Explain in the narrative site description section specific efforts that were made to find the site and possible reason(s) the site could not be relocated.

(2) Prepare a new detailed site

plan map for each previously recorded site following the standards in 4.10.15.11D NMAC. Annotated copies of existing maps are not acceptable. The site plan shall be based on the previous site map and should include important features of the previous map along with new observations. Observations made during the current survey shall be clearly distinguished from the observations made on the existing map.

F. Documentation of features. Individual features shall be illustrated if the form of a feature cannot be accurately rendered on the site plan map. Measurements shall be taken in metric units unless the feature is historic and English measurements are more appropriate. Render standing structures and other standing features in both plan and elevation.

G. In-field artifact analysis. Perform in-field analysis on all or a sample of all classes of surface-visible artifacts including but not limited to lithics, ceramics and historic artifacts. The size of the sample shall be sufficient to document the full variety of types of artifacts represented at the site and to delineate intrasite activity areas. Formal, bounded sample units are recommended. Required information may be documented in a table, on a form developed by the individual or firm performing the survey or on a form required by the state agency. Required information includes class of artifact, make, type or series and other attributes that relate to interpretation of chronology, form and function. If measurements will aid in the identification or classification, measure artifacts with a ruler, tape or calipers. Measurement shall be taken in metric units unless the artifact is historic and English measurements are more appropriate. Illustrations or photographs of diagnostic artifacts are encouraged. Attach copies of the in-field analysis forms, narrative descriptions and illustrations to the LA archaeological site record.

H. Photography.

(1) Take photographs of all newly recorded and previously recorded sites. Photograph the following subjects:

(a) general setting of the site within its boundaries; incorporate features or background landmarks in site setting photographs;

(b) individual cultural features;

(c) representative diagnostic artifacts or items representative of the major classes of artifacts within the site assemblage; and

(d) scale and photographic board.

(2) Photographs shall conform to the standards detailed below.

(a) Black-and-white negatives, prints, color transparencies, color prints or digitally captured images are all acceptable media. Black-and-white images printed on

silver-emulsion resin-coated paper or black-and-white prints produced from digital images that meet or exceed a 75-year-permanence standard as defined by the national park service, national register of historic places, are preferred for archival stability. Digital images shall not be submitted on compact discs. Attach a photographic log that includes, but is not limited to, the NMCRIIS number, the LA number, provenience, content, orientation, photographer and date.

(b) Submit all photographic materials in archivally stable sleeves as an attachment to the report. Do not append photographs to the LA archaeological site record. Prints, negatives and slides shall be sleeved in page preservers made to fit the format size. Label the back of prints or slide sleeves with pencil or archivally approved photographic ink. Do not label with a ballpoint pen, permanent ink or adhesive labels.

(c) Do not affix photographs to paper with glue, tape or staples.

(d) Digital images shall not be submitted on compact discs. If digital images are submitted, print on acid-free paper using a toner-based printer.

I. Other agency requirements. The state agency may require other recording activities. The state agency may also require the permanent or temporary marking of the site datum and/or boundaries. Contact the archaeologist at the agency to see if additional recording or marking procedures are required.

[4.10.15.11 NMAC - N, 1/01/06]

4.10.15.12 RECORDING HISTORIC STRUCTURES, BUILDINGS AND OTHER CULTURAL PROPERTIES DURING SURVEY:

A. Record all large historic sites and districts 50 or more years old that are located within the APE or project area or that may be eligible for the state or national registers within 5 years of the date of the survey. The recording shall be performed under the review of an architectural historian, historian or historic architect listed in the SHPO directory (4.10.8.11 NMAC). Identify and record properties that meet the requirements of national register criteria consideration G (properties that have achieved significance within the past 50 years).

B. If portions of the historic resource extend outside of the project area and the resource is on state land, record the entire resource. If a portion of the resource lies on land not owned or controlled by a state agency, record the portion on state land. If permission for access can be obtained from the owner of the remaining portion of the resource, record the entire

resource.

C. Complete an HCPI form for all historic structures, buildings and other cultural properties in conformance with the *historic cultural properties inventory manual*, July 31, 2001, available on HPD website (<http://nmhistoricpreservation.org/>) or from HPD. HCPI form 1 shall be used for recording historic structures, buildings and other cultural properties that are not potentially eligible for nomination to the state register of cultural properties and national register of historic places. HCPI form 2 shall be used for historic structures, buildings and other cultural properties that are potentially eligible or are already on the state or national registers. HCPI form 2 shall be completed by architectural historians, historical architects or historians listed in the SHPO directory (4.10.8.11 NMAC). Information includes but is not limited to:

(1) administrative and project information including name of property, location, local reference number, property type, date of survey, previous survey date(s), name of project, universal transverse mercator (UTM) coordinates, source graphics and photographic information; GPS coordinates to 10-meter accuracy or better are encouraged;

(2) a brief description of the property, present use; construction data and setting, relationship to surroundings; additional perspectives (photographs, drawings, footprint), name of recorder and performing agency or group and owner or individuals knowledgeable about the property;

(3) the significance of the property and identifying the state register and national register status and name of property if listed and whether it is part of a district;

(4) detailed information on the property including architectural and construction details, number of stories, foundation, roof construction materials, windows, doors, chimneys, porches and other significant features, modifications and date if known or estimated; primary architectural style, associated documents and location of source materials and associated properties; and

(5) a site plan with footprint, porches and balconies, major landscape features, north arrow, associated properties, walls, fences, gates, nearby roads and driveways.

D. Photography.

(1) Take photographs of all recorded buildings, structures and other cultural properties recorded on the HCPI form; include related context images or streetscapes as appropriate. Black-and-white prints are required. Black-and-white images printed on silver-emulsion resin-coated papers or black-and-white prints produced from digital images that meet or

exceed a 75-year-permanence standard as defined by the national park service, national register of historic places, are acceptable. Digital images shall not be submitted on compact discs.

(2) Submit all photographic materials in archivally stable sleeves as an attachment to the HCPI form. Prints, negatives and slides shall be sleeved in page preservers made to fit the appropriate format size. Label the pack of prints or slide sleeves with pencil or archivally approved photographic ink. Do not label with a ball-point pen, permanent ink or adhesive labels. Do not affix photographs to paper with glue, tape or staples.

[4.10.15.12 NMAC - N, 1/01/06]

4.10.15.13 RECORDING ISOLATES DURING SURVEY:

A. There is no standardized form for recording isolates on state lands. Isolates shall be listed and described in a table, on a form developed by the individual or firm performing the survey or on a form required by the state agency.

(1) Include all qualitative and quantitative observations relevant to the artifact consistent with the standards for in-field analysis in this section. Make type or series identifications when possible.

(2) If the isolate consists of more than one item, record the dimensions of the distribution (for example, three flakes scattered over 2-by-3 meter area or sherds from a single pottery vessel scattered over a 75-cm diameter area).

B. Determine the location of the isolate and plot on a copy of a USGS 7.5-minute (1:24,000) topographic quadrangle map; include name, date and code of the map. Determining location with a global positioning system (GPS) unit to 10-meter accuracy is encouraged.

C. Illustrate diagnostic artifacts and other items or take photographs if they will aid in the description or identification of the item.

[4.10.15.13 NMAC - N, 1/01/06]

4.10.15.14 COLLECTION OF ARTIFACTS DURING SURVEY:

A. Collection of artifacts. Collection of artifacts from archaeological sites and isolates is strongly discouraged. Collection of artifacts from state trust lands shall be allowed only with the written permission of the Commissioner. In all other cases, collections are permitted if the items are likely to be lost through illegal collection, are required to address specific predefined research issues that necessitate laboratory analysis or are necessary for accurate classification. Collections shall be analyzed in the laboratory, reported upon in the survey report and curated at an acceptable repository pursuant to 4.10.8 NMAC.

(1) **Collection from archaeological sites.** A sample of artifacts may be collected in accordance with the following specifications. Exceptions to these specifications are allowed with the written concurrence of the state agency.

(a) **Sampling.** Artifacts collected from archaeological sites shall only represent an extremely small and nominal percentage of the total surface-visible artifact assemblage and shall never involve collection of all surface-visible artifacts.

(b) **Recording.** Attach a list of all collected artifacts with provenience information to the LA archaeological site record and as an appendix to the survey report.

(c) **Location of collected artifacts.** Plot the location of each collected artifact on the site plan map unless defined spatial collection units are used such as 1-by-1 meter grid units or 1-meter diameter collection units. If collection units are employed, plot the location of each unit on the site plan map and indicate the dimensions of the collection units and artifacts collected. Plot artifact and collection unit locations relative to a permanent datum.

(2) **Collection of isolates.** Attach a list of all collected isolates and their GPS coordinates to 10-meter accuracy to the survey report.

B. Analysis of collected artifacts. Analyze collected artifacts in a laboratory and in accordance with current professional standards for the class of artifact in the region. At a minimum, required information includes class of artifact, make, type or series and other attributes that relate to interpretation of chronology, form and function. Include results of the analyses in the survey report.

[4.10.15.14 NMAC - N, 1/01/06]

4.10.15.15 LIMITED TESTS DURING SURVEY:

A. Purpose. Limited tests of archaeological sites during survey are strongly discouraged. Total surface disturbance resulting from the tests shall not exceed five one-hundredths percent (.05%) of the total site area. The supervisory archaeologist should consider the following when making a decision on whether to conduct limited tests.

(1) Do not conduct limited tests if a site can be avoided by the undertaking.

(2) Do not conduct limited tests to assess potential for subsurface deposits if a recommendation of eligibility can be made from visible evidence such as cultural deposits exposed in road beds or arroyo cuts.

(3) Conduct limited tests only when the tests are likely to produce sufficient information to make a definitive recommendation on whether the site should or should not be listed on the state register or

determined eligible for the national register. Often limited tests are too restricted in scale to demonstrate the absence of subsurface cultural deposits. Test excavations (see 4.10.16 NMAC) are recommended in these situations and produce more reliable information about the site.

(4) Limited tests are prohibited if no adequate screen is available during survey.

B. Limited test equipment. Use hand tools such as trowels, shovels, hand corers and non-mechanical bucket augers. The use of mechanized equipment is prohibited.

C. Standards.

(1) Design limited tests to gather the appropriate information and to minimize damaging or diminishing the integrity of the archaeological site and features within the site. Make systematic tests to maximize interpretation of results. All shovel tests, augers, probes, small excavation units and test pits shall be given a unique field designation and shall be point-provenienced or excavated on a grid.

(a) Shovel tests shall be approximately 30 cm in diameter.

(b) Small test excavation units shall be 50-by-50 cm in size.

(c) Do not conduct trowel tests.

(2) With the exception of soil samples, sediments removed from all limited test units shall be passed through a screen of no greater than one-quarter inch (6.35mm). Consider using a smaller screen size.

(3) The bottom of the tests shall be lined with landscape cloth or marked in some other fashion to indicate depth of disturbance.

(4) Excavation of features is prohibited during limited tests.

(5) Collection of artifacts recovered from limited tests is discouraged and in-field artifact analysis is recommended.

(a) **In-field analysis.** Record recovered artifacts to professional standards in the region for the class of artifact. At a minimum, required information includes class of artifact, make, type or series and other attributes that relate to interpretation of chronology, form and function. Illustrations or photographs of diagnostic artifacts are encouraged. Attach copies of the in-field analysis forms, narrative descriptions and illustrations to the LA archaeological site record.

(b) **Collections.** If collections are made, note the provenience or collection unit and depth from which the artifact was retrieved. Analyze collected artifacts in a laboratory and in accordance with current professional standards for the class of artifacts in the region. Include results of the analyses in the survey report and indicate disposition of artifacts on the LA archaeo-

logical site record form. Collections shall be curated at an acceptable repository pursuant to 4.10.8 NMAC.

D. Documentation of limited test activities. At a minimum, the following information shall be included:

(1) explain the purpose of the limited tests on the archaeological site record and discuss in the survey report;

(2) location of test units. Plot the location of all test units on the site plan map relative to a permanent datum. List the point provenience or grid coordinate of each limited test unit relative to the site datum. Label limited test units according to their provenience on the site plan map, or attach a list of proveniences to the LA archaeological site record; and

(3) description of deposits. Describe the nature of the subsurface deposits encountered in each test unit and the depth of the unit. Use standard scientific terminology; color descriptions shall be made in Munsell terminology. Prepare profile drawings and photographs of at least one wall of each small excavation unit or test pit and features. Append the deposit descriptions to the LA archaeological site record and discuss in the survey report. Deposit descriptions include but are not limited to sediment color, texture, moisture content, nature of inclusions, organic content and an inventory of cultural materials, if any.

[4.10.15.15 NMAC - N, 1/01/06]

4.10.15.16 EVALUATION AND STATEMENT OF SIGNIFICANCE: Evaluate each property identified during the survey in conformance with this section and document in the technical report and on the LA archaeological site record or HCPI form. Depending on the complexity and scale of the project, present evaluations in both narrative and tabular form.

A. Apply the criteria for integrity and significance to evaluate each property over 50 years old identified during the survey pursuant to 36 CRF Part 60.4. Identify the property as a district, site, building, structure or object. Indicate whether the property should be listed on the state register or should be determined as eligible for national register listing. Properties less than 50 years old should be evaluated if it is apparent that they will be eligible for the state or national registers within 5 years of the date of survey. Properties less than 50 years old that may be eligible for inclusion in the national register based on exceptional significance should be evaluated using national register criteria consideration G. If a property has been previously nominated for either the state or national registers, discuss the register status of the property.

B. Significance statement. Prepare a clear statement of significance for each archaeological site, historic structure or building, or other cultural property identified during the project. Indicate the level of significance as local, state or national and include in the technical report.

(1) If the cultural property is recommended as not significant or not eligible for listing, provide a clear discussion and complete documentation to support the recommendation. For archaeological sites, the discussion shall demonstrate that the site has been thoroughly studied, that surface artifacts and features have been recorded and that sufficient subsurface tests have been performed to support a conclusion that the site is unlikely to contribute important information. The lack of subsurface deposits is not in itself sufficient to support a recommendation that a site is not significant or not eligible. If the cultural property is from the historic period, provide basic archival documentation to augment field information and support the significance evaluation.

(2) If the cultural property is recommended as significant or eligible for listing, provide evidence supporting its significance including reference to historic contexts and scholarly research in the region. Include a specific, evidence-based argument, linked to specific research topics and characteristics (historic values) observed. The recommendation shall be documented on the LA archaeological site record, HCPI form or other HPD-approved inventory form. For archaeological sites provide detailed descriptions of the types and numbers of surface artifacts and the types and numbers of features visible on the surface or in arroyos or road cuts. The presence of a large artifact scatter or the potential for subsurface deposits is not sufficient information to support an eligibility recommendation without additional discussion. If the cultural property is historic, include the results of archival research to support the evaluation.

(3) Survey data alone may not be sufficient to evaluate the property. For archaeological sites, it may be necessary to conduct more extensive test excavations, beyond survey-level study and limited tests, to gather sufficient information to evaluate the specific research potential to support a recommendation for listing or not listing the property on the state or national registers. Additional archival research and detailed documentation may be necessary to evaluate the specific potential and criteria for historic structures, buildings and engineering features. Provide a clear explanation that details the need for additional information. Document the recommendation on the LA archaeological site record, the HCPI form

or other HPD-approved inventory form. [4.10.15.16 NMAC - N, 1/01/06]

4.10.15.17 RESEARCH DESIGNS UNDER PROJECT-SPECIFIC PERMITS: Prepare a research design for sample, thematic and other surveys to be performed under a project-specific permit. Research designs are not required for surveys performed under a general permit.

A. Purpose. A research design shall detail the reason for the survey and how the survey will contribute to the public's knowledge of the cultural heritage of the state. Research designs shall take into account broad regional research needs and strive to fill in gaps in current state of knowledge and shall be realistic and attainable from the nature of the study. Research designs shall be flexible enough to accommodate unanticipated discoveries.

B. Components. A research design shall include the following components. The length of each section shall be appropriate to the complexity and scale of the study.

(1) **Title page.**

(2) **Table of contents, lists of figures and tables** (for documents with more than 10 pages of text).

(3) **Purpose of the study.** Provide a succinct overview of the proposed survey including:

(a) goals for the survey;

(b) the name of the project;

(c) brief description of the history of the project;

(d) the project sponsor or client, state agency and other land jurisdictions;

(e) project location and size of area to be surveyed in acres and hectares; and

(f) project map at a USGS 7.5-minute (1:24,000) topographic quadrangle scale depicting survey area boundaries, land ownership boundaries, north arrow, key and name of USGS quadrangle(s).

(4) **Research context.** The context provides a foundation for the development of specific research questions. Scale the discussion to the complexity, size and limitations of the proposed study. The length of each discussion may vary but shall include the following elements:

(a) review of pertinent literature including but not limited to statewide and regional cultural-historical overviews and historic contexts, research designs, published archaeological, ethnographic and historical monographs and articles, cultural resource management technical reports, field reports and archival sources;

(b) discussion of the theoretical orientation and assumptions guiding the proposed research;

(c) identification of general

research problems and topics relevant to the region; discuss the research problems in the context of the culture history and knowledge of the area and current research gaps;

(d) specification of research questions; provide a clear link between the questions and the theoretical assumptions;

(e) identification of the specific data needed to answer the questions; explain how the survey results are likely to contain data relevant to answer the questions;

(f) discussion of survey procedures; adopt the standards for intensive survey whenever possible (4.10.15.11 NMAC); explain and justify deviation from these standards; discuss how the specific field methods and approach are related to the research goals; provide a specific link between the data needs and the survey approach; for sample surveys, explain why the proposed sampling strategy is appropriate to the research questions; samples may be random or stratified but also shall be appropriate to estimate the nature, distribution and density of cultural properties within the entire project area; and

(g) discussion of analytical procedures; provide a specific link between the research questions, data needs and proposed analyses to resolve the research questions; discuss sampling strategy and sampling fraction if all artifacts recorded and specimens collected will not be analyzed; include copies of analysis forms expected to be used for field or laboratory analysis in addition to the LA archaeological site record form.

(5) **Personnel.** Identify all supervisory personnel and analysts who will perform the fieldwork, laboratory analyses and prepare the report. Include subcontractors, if appropriate, and off-site laboratories for specialized analyses if proposed. If specific personnel or subcontractors have not been identified for all activities, provide a list of personnel or subcontractors who may be retained, or list the minimum qualifications of the personnel that will be retained.

(6) **Schedule.** Explain the expected time frame to implement the field, analysis and reporting phases of the project.

(7) **References cited.**

(8) **Appendices as needed.**

[4.10.15.17 NMAC - N, 1/01/06]

4.10.15.18 NMACRIS INVESTIGATION ABSTRACT:

A. Obtain a NMACRIS number from ARMS immediately following the completion of the survey and prior to writing and submitting a report. If any archaeological sites were encountered during survey, request an LA archaeological site number for each newly discovered site. Do not request new numbers for previously recorded sites if they already have LA numbers.

B. Complete the NMACRIS investigation abstract for the survey. The NMACRIS investigation abstract includes the following information.

(1) Administrative data.

Provide the NMACRIS number; the name of the federal or state agency or sponsor for purposes of consultation, if applicable, and agency identification number; performing agency name, field personnel and report number; report title in its entirety with no abbreviations, the author(s) and report date; permit number(s); client or customer name, contact information and project number; beginning and end dates for the investigation and investigation type. Indicate status of tribal consultation.

(2) Location and land status.

Indicate landownership status type (federal, state, tribal, private or any combination thereof) and name or administrative unit (such as, bureau of land management Farmington field office, state land office, New Mexico department of transportation, pueblo of Taos). Specify survey area and APE in acres for each land status; for linear surveys include length and width. Enter USGS 7.5-minute (1:24,000) topographic quadrangle name, date and code; township, range, section, quarter section to nearest 40-acre unit or unplatted. Indicate if the PLSS is protracted. Identify other source graphics if used. Specify the nearest city or town, county and state for the survey and include other descriptions including but not limited to well pad footages, mile markers or land grant names.

(3) **Project data.** Enter the project name (if known), date of NMACRIS database and other agency records check and name of individual conducting the search. Provide a description of the project or undertaking, the environmental setting, condition of the project area (such as grazed, bladed or dense vegetative cover) and percent ground visibility.

(a) For surveys provide a brief description of survey methods, type of survey, configuration, scope, coverage method, survey interval, time in field for survey, time recording archaeological sites and time recording the built-environment.

(b) For monitoring projects list sites monitored by LA site number and provide a brief description of any area of historic and scientific interest monitored, if applicable. Include NMACRIS number(s) and the report title in its entirety with no abbreviations for the previous project that identified the sites to be monitored. Indicate any changes in site condition noted during the monitoring project and whether site updates were completed.

(c) For limited tests, test excavation and excavation, list sites by LA site number and indicate the type of tests performed, the number and size of each test

unit and whether site updates were completed.

(4) Cultural resource findings.

Summarize the cultural resources identified. Specify the number of sites, the number of historic structures, buildings or other cultural properties and the number of isolates discovered. Indicate the number of sites and other cultural properties registered; the number of sites and other cultural properties not registered, and the number of previously recorded sites revisited. List archaeological sites by LA site number. Indicate if collections were made and whether tests were conducted. For negative surveys only, discuss the possible reasons for the lack of sites, evaluate significance of the identified resources pursuant to 4.10.15.16 NMAC and make management recommendations.

[4.10.15.18 NMAC - N, 1/01/06]

4.10.15.19 NEGATIVE SURVEY

REPORTS: The NMACRIS investigation abstract constitutes the final survey report for surveys that do not identify cultural properties of any kind or only identify isolates. Letter reports are prohibited.

A. Complete all sections of the NMACRIS investigation abstract. An electronic version of the NMACRIS investigation abstract and guidelines for its use are available from ARMS and HPD. It is permissible to increase or decrease the size of the data fields on the paper copy of the form, as needed, or attach continuation sheets.

B. In the event an archaeological site reported to be located within the APE or project area is not relocated during the survey, check the site update box on the LA archaeological site record and complete the identification and ownership, recording information, condition, recommendations and narrative site description sections. Explain in the narrative site description section specific efforts that were made to find the site and the reason(s) the site could not be relocated.

C. Append the following to the NMACRIS investigation abstract:

(1) a copy of the NMACRIS project map check; NMACRIS table is optional;

(2) a project map based on a USGS 7.5-minute (1:24,000) topographic quadrangle source that depicts the exact location of the APE, survey area (if different from the APE) and exact location of all isolates;

(3) a list of all isolates and detailed information on each isolate consistent with 4.10.15.13 NMAC;

(4) a list of all isolates collected;

(5) photographs and photographic log, illustrations and other graphics;

(6) a copy of all updated LA archaeological site records consistent with

4.10.15.11E NMAC; and

(7) signature of the principal investigator certifying accuracy of the information provided.

D. Report review. The NMCRIS investigation abstract shall be reviewed in conformance with 4.10.8.18 NMAC. If collections were made during survey, the permittee shall curate the collections in accordance with the procedures outlined in 4.10.8.18 NMAC.

[4.10.15.19 NMAC - N, 1/01/06]

4.10.15.20 POSITIVE SURVEY

REPORTS: Prepare a technical report for all surveys that identify archaeological sites, historic structures and buildings, isolates and other cultural properties. Letter reports are prohibited. Include the results of any limited tests conducted. A standard survey report shall contain the following sections unless indicated as optional below. The length of each section shall be appropriate to the complexity and scale of the survey project. State agencies may have additional report requirements.

A. Title page. List the following information:

(1) NMCRIS number in the upper left-hand corner;

(2) report title, author(s) and the principal investigator if different from the author;

(3) name of the organization that performed the survey;

(4) agency(ies) requiring and receiving the report;

(5) state permit number and other permit numbers for project; and

(6) report date (month, day and year).

B. Abstract. Complete all sections of the NMCRIS investigation abstract, which serves as the report abstract.

C. Table of contents (required only for reports with more than 10 pages of text). Include:

(1) list of major report sections, subheadings and appendices with page numbers;

(2) list of figures and plates with page numbers; and

(3) list of tables with page numbers.

D. Introduction and Project Description. Discuss the purpose of the survey and project background. Include the following information:

(1) purpose of the survey and project background;

(2) project description and location;

(3) description of the project area and survey area (if different from the project area or the APE);

(4) size of the project area and

size of area surveyed in acres and hectares;

(5) name of each public agency and the portion of surveyed land owned by each in acres and hectares; privately owned land may be reported as a cumulative total in acres and hectares rather than by each private land owner; if multiple areas and land jurisdictions are involved, the information may be presented in a table; if a project falls under the jurisdiction of multiple state and federal agencies, discuss the relationship between the various agencies;

(6) the township, range, section and quarter section and protraction; for state trust land identify the section to nearest 40-acre parcel;

(7) map showing the general project location within the state or region (and land jurisdiction if more than one owner);

(8) project personnel: the names and position titles of the individuals who participated in the survey, including crewmembers and any analytical or support staff who did not participate in the fieldwork but assisted in preparing information for the report; the client or sponsor; and

(9) exact dates of the survey.

E. Environmental setting of the project area. The length of each of the following discussions shall be appropriate to the complexity and scale of the survey project, and should include representative photographs of environmental features as appropriate.

(1) **Natural environment.** Describe the topography, geology and soils; contemporary flora and fauna; and current climatological conditions. Discuss the effect of current environmental conditions and past environmental processes (such as erosion or deposition) on the visibility and preservation of archaeological remains.

(2) **Cultural environment.** Identify modern land use impacts such as mining, logging, agricultural activities or urban development and discuss the effect that modern land uses have on the visibility and integrity of archaeological sites and other cultural properties. Note evidence of vandalism or looting.

F. Results of records check. Summarize the results of all records checked for the project area and 500-meter or 1000-meter buffer. List all known previous surveys or investigations and summarize their results. List each archaeological site, national and state register property, historic structure and building and other cultural properties located in the project area and all archaeological sites within the 500 meter or 1000 meter buffer. Provide a brief summary of these resources. The lists may be presented in tabular form. Include the date when the records check was conducted and name of the individual performing the check.

G. Culture history, literature review and research orientation.

The length and detail of this section shall be appropriate to the type and scale of the project and the findings.

(1) Discuss the past human occupation of the survey area in its regional context within established culture-historical frameworks or chronologies for all periods of occupation. Based upon current research, describe the cultural and historic developments for each major period of time, the archaeological evidence (site types, types of artifacts) characteristic of each time period and the major research questions associated with each period with a goal to aid in the understanding and evaluation of resources identified during the project. Tailor discussion to the types of cultural resources found during survey. For example, if only sites dating to the U.S. Territorial period were located, then the culture history section should be devoted to the cultural and historic developments of late nineteenth and the early twentieth centuries. The discussion of other periods of occupations should be abbreviated.

(2) Incorporate results of the pre-field literature review. Reference statewide and regional cultural-historical overviews and research designs, published archaeological, ethnographic and historical monographs and articles, cultural resource management technical reports, field reports (both positive and negative survey reports) and historic maps and records, as appropriate, given the results of the project. Incorporate the results of the records check.

H. Research design (required for surveys under a project-specific permit; optional for surveys under a general permit). Detail the problem orientation and specific research issues and questions that guided the survey.

I. Field methods. Include the following information:

(1) the size of the survey crew;

(2) the transect interval(s) and transect method;

(3) field conditions during survey, including access, lighting, ground cover and other factors affecting identification or recording of cultural properties;

(4) methods of site location (maps, global positioning system, topography);

(5) methods of site recording (compass and pace, compass and tape, instrument mapping);

(6) types of photographs taken and the media used (black-and-white prints, color transparencies, color prints or digital images);

(7) any additional documentation methods, such as video recording, illustration of artifacts and features, remote sens-

ing, or specialized in-field artifact analysis;

(8) strategies employed for collection or limited tests, including the strategies employed for the location of collection or limited test units, the rationale for the collection or test unit size used and the choice of testing implements; and

(9) list the types of documents and other media used for all types of recording.

J. Description of cultural resources and analysis of survey results. The results of the survey shall be both descriptive and interpretive and contribute to the public's knowledge of the cultural heritage of the state.

Describe all archaeological sites recorded during the survey, all historic structures, buildings and other cultural properties and all isolates and discuss them in relationship to the culture history of the area. Include the results of any limited tests conducted. Include illustrations and photocopied or digitally reproduced photographs to augment the text.

(1) Location of cultural properties. The public disclosure of the location of archaeological sites on state and private lands is prohibited by Section 18-6-11.1 NMSA 1978. The public disclosure of the location of archaeological sites on federal lands is prohibited by 36 CFR 296.18. Include all detailed locational information (UTM coordinates, township, range and sections) whether in narrative or maps in an appendix for easy removal so that the report may be made available to members of the public.

(2) Descriptions of archaeological sites. Provide a description of each site. The description should summarize rather than duplicate information contained in the LA archaeological site record. Discuss the environmental setting of the site; the site condition; the nature and distribution of site features; and the nature and distribution of artifacts. Discuss the nature and potential of subsurface deposits and the basis for the description. Include in the body of the report a copy of the site plan if it aids in understanding the narrative description of the site. Include illustrations and photocopied or digitally reproduced photographs of features and artifacts specific to the site. If the site was previously recorded, discuss briefly the recording history of the site and summarize any changes in the physical condition of the site since it was last recorded.

(3) Descriptions of archaeological sites not relocated. Provide a brief description of the site as it was last recorded. Discuss efforts to try to locate the sites and the possible reason why the site could not be relocated (for example, the artifacts on the surface of the site were collected or the site was destroyed by development).

(4) Descriptions of other cultur-

al properties. Describe all other cultural properties, including but not limited to historic structures, buildings, and cultural landscapes identified during the survey area or properties that may be directly or indirectly affected by the project. Discuss the condition and integrity of the properties. Incorporate information obtained from archival sources to place the property in its historic context.

(5) Descriptions of isolates. Information on isolates may be presented in narrative or tabular format. Include all qualitative and quantitative observations relevant to the artifact class and make type or series identifications when possible. If the isolate consists of more than one item, include the distribution area. Include information on physiographic location or vegetation in the immediate area and the depositional or erosional context of the isolate.

(6) Interpretive summary. Discuss the results of the survey in the context of the regional occupation of the area and knowledge of the cultural heritage of the state.

K. Evaluation and statement of significance. Apply the criteria for integrity and significance to evaluate each property identified during the survey pursuant to 36 CFR Part 60.4 and in conformance with 4.10.15.16 NMAC. Depending on the complexity and scale of the project, present evaluations in both narrative and tabular form.

L. Effect determination. If not a research survey, identify whether the project has the potential to affect the cultural properties located during the survey and provide a statement on how the project will affect the properties. Discuss how the historic values or significant characteristics of each property will or will not be affected by the project. Discuss how properties may be avoided or protected and whether it will be necessary to develop a mitigation program if the properties cannot be avoided or protected. Depending on the complexity and scale of the project, present evaluations in both narrative and tabular form.

M. Summary and recommendations.

(1) Discuss the survey results in relation to the archaeology and history of the area as described in the culture history section. Include isolates as well as sites in the discussion. The size and scale of the discussion should be relative to the size of the survey and its findings. Place the sites and isolated artifacts within the context of the currently known pattern of archaeological remains in the general area of the survey.

(2) Explain how the survey findings contribute to the understanding of the current research problems defined for the area. If the findings were not consistent with the known culture history of the area

(for example, if fewer sites were found than would be expected, or site types not previously known to occur in the area were located), possible explanations for these anomalous findings must be explored.

(3) Any concerns expressed through tribal consultation shall be discussed in general terms. Detailed information on traditional cultural places, if any, and other properties shall be included in an appendix for easy removal so that the report may be made available to members of the public.

(4) Discuss any management concerns or recommendations for future study.

N. References cited. List all references cited in the report.

O. Appendices. Mark as confidential all pages that discuss or depict exact locations of archaeological sites or traditional cultural places pursuant to Section 18-6-11.1 NMSA 1978. At a minimum include the following:

(1) a project map(s) depicting the exact location of the project area, survey area and exact location of all archaeological sites, historic structures, buildings and other cultural properties, water delivery systems (acequias) and other cultural properties identified during the survey; isolates may be plotted on this map or a separate map at the same scale; the map shall be at the equivalent of a USGS 7.5-minute (1:24,000) topographic quadrangle scale;

(2) a list of all isolates, detailed information on each isolate if this information has not been included in the body of the report, and GPS location. Include photographs and illustrations, as appropriate; and

(3) a list of artifacts collected during the survey project. Include provenience information and associated illustrations and photographs;

P. Attachments. Mark as confidential all pages that discuss or depict exact locations of archaeological sites pursuant to Section 18-6-11.1 NMSA 1978. Append the following to the report:

(1) a copy of the NMCRIS map server map;

(2) LA archaeological site records consistent with 4.10.15.11 NMAC for all newly recorded sites, all relocated sites and all sites that could not be relocated, as appropriate; attach a site plan map and a copy of the portion of a USGS 7.5-minute (1:24,000) topographic quadrangle map showing the site location to each LA archaeological site record; include any other site-specific records generated, such as in-field artifact analysis forms or analysis forms for collections; if coded analysis forms are attached, place a copy of the code key with every site form; do not include copies of site records obtained as part of the records check;

(3) HCPI form consistent with

4.10.15.12 NMAC for all historic structures, buildings and other cultural properties recorded during the survey;

(4) all archivally packaged photographic materials and photographic logs consistent with the standards in 4.10.15.11 or 4.10.15.12 NMAC;

(5) oversize (greater than 11x17 inches) maps and plans of individual sites; do not attach these materials to the LA archaeological site record; and

(6) engineering plan maps, aerial photographs and other nonstandard source graphics.

Q. Report review. The report shall be reviewed in conformance with 4.10.8.18 NMAC. If collections were made during survey, the permittee shall curate the collections in accordance with the procedures outlined in 4.10.8.18 NMAC. [4.10.15.20 NMAC - N, 1/01/06]

4.10.15.21 POPULAR REPORTS: For positive surveys of 160 acres or more, surveys that identify 10 or more sites, or whenever the cultural resources of importance or of general interest are identified, prepare a short popular summary suitable for distribution in a newspaper, newsletter or magazine. The purpose of the report is to provide information to the interested general public about the state's heritage and contributions from on-going research and studies on state land. The public disclosure of the location of archaeological sites on state and private lands is prohibited by Section 18-6-11.1 NMSA 1978. The public disclosure of the location of archaeological sites on federal lands is prohibited by 36 CFR 296.18. The report may be brief, approximately 250 to 500 words in length, and may include photographs or graphs as appropriate. The popular report shall be submitted to the state agency with the final positive survey report. [4.10.15.21 NMAC - N, 1/01/06]

4.10.15.22 DEVIATIONS: The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act. [4.10.15.22 NMAC - N, 1/01/06]

HISTORY OF 4.10.15 NMAC: [RESERVED]

NEW MEXICO CULTURAL PROPERTIES REVIEW COMMITTEE

TITLE 4 C U L T U R A L RESOURCES

CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION

PART 16 STANDARDS FOR EXCAVATION AND TEST EXCAVATION

4.10.16.1 ISSUING AGENCY: Cultural Properties Review Committee. Contact State Historic Preservation Division, Department of Cultural Affairs. [4.10.16.1 NMAC - N, 1/01/06]

4.10.16.2 SCOPE: This rule applies to all public and private entities, including but not limited to individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums and any agency of the federal government proposing to conduct archaeological investigations on any lands owned or controlled by the state of New Mexico. Political subdivisions of the state such as counties or municipalities may incorporate the following into their regulations and ordinances affecting private land. [4.10.16.2 NMAC - N, 1/01/06]

4.10.16.3 STATUTORY AUTHORITY: Section 18-6-5 (NMSA 1978) of the Cultural Properties Act. [4.10.16.3 NMAC - N, 1/01/06]

4.10.16.4 DURATION: Permanent. [4.10.16.4 NMAC - N, 1/01/06]

4.10.16.5 EFFECTIVE DATE: January 1, 2006, unless a later date is cited at the end of a section. [4.10.16.5 NMAC - N, 1/01/06]

4.10.16.6 OBJECTIVE: To establish standards and procedures to excavate archeological sites and areas of historic and scientific interest and to conduct test excavations of archaeological sites on land owned, controlled or operated by a department, agency, institution or political subdivision of the state. [4.10.16.6 NMAC - N, 1/01/06]

4.10.16.7 DEFINITIONS:

A. "Archaeological investigation" means the study of archaeological sites, isolates and other cultural properties and areas of historic and scientific interest including without limitation survey and inventory, examination, collection, limited tests, test excavation, excavation

and monitoring.

B. "Archaeological site" or "**site**" means a location where there exists material evidence of the past life and culture of human beings in the state. A significant archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, pueblos, homesteads, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials, and locales that have the potential for subsurface features or cultural deposits.

C. "Areas of historic and scientific interest" means areas lacking surface evidence of cultural properties but where there is a high probability of finding subsurface material remains and cultural deposits or areas suitable for geomorphological or paleoenvironmental study.

D. "Committee" or "**CPRC**" means the cultural properties review committee, created pursuant to Section 18-6-9 of the Cultural Properties Act.

E. "Cultural property" or "**cultural resource**" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

F. "Excavation" means displacing, disturbing or moving earth, soil, dirt, other deposits or material remains from their current contexts or significant orientation in, or on, the ground within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

G. "Historic preservation division" or "**HPD**" means the division within the department of cultural affairs created pursuant to Section 18-6-8A of the Cultural Properties Act.

H. "Human burial" or "**unmarked human burial**" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

I. "Material remains" means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, bas-

ketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh, teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

J. "Mechanical earth-moving equipment" means any motorized machine or device that is capable of displacing, disturbing or moving earth, soil, dirt or other deposits or materials from their current contexts or significant orientation in, or on, the ground, including without limitation trenchers, backhoes, graders, scrapers, bulldozers and front-end loaders.

K. "Monitoring" means the presence of and visual inspection by a supervisory archaeologist on the ground immediately prior to and during ground-disturbing actions to ensure site protection, avoidance of site deposits or recovery of information from newly discovered cultural properties.

L. "Museum of Indian arts and culture-laboratory of anthropology" or "MIAC" means the museum division within the department of cultural affairs, museum of New Mexico, that serves as the repository for archaeological materials and associated records and documents taken or collected from state land.

M. "National register of historic places" or "national register" means the official federal register of historic properties maintained by the U.S. department of the interior, national park service.

N. "New Mexico cultural resource information system" or "NMCRIIS" means the statewide archaeological and cultural properties database maintained by archaeological records management section (ARMS) within the historic preservation division that maintains the database and associated records and documents pursuant to Section 18-6-7A of the Cultural Properties Act.

O. "Permit" means the written authorization required for all public

and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time, all of which are specified in the written authorization.

P. "State agency" means a department, agency, institution or political subdivision of the state.

Q. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 of the Cultural Properties Act.

R. "State historian" means the historian designated pursuant to Section 18-6-14 of the Cultural Properties Act.

S. "State historic preservation officer" or "SHPO" means the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act and serves as the director of the historic preservation division.

T. "State land" means property owned, controlled, or operated by a department, agency, institution or political subdivision of the state. Examples of state land, include but are not limited to: state trust lands managed by the commissioner of public lands; New Mexico department of transportation rights of way and easements; state parks; state monuments; state game and fish lands; county and municipal property including open space areas, leased lands, and rights of way; and lands owned or managed by public schools and state colleges and universities.

U. "State register" or "official register" means the New Mexico register of cultural properties maintained by the CPRC for the purpose of recording cultural properties deemed worthy of preservation.

V. "Written and photographic records" means original or legible duplicate site data, such as site forms, artifact forms, notes, drawings, tables, maps, plans, charts and other written materials, and prints, slides and other photographic records.

[4.10.16.7 NMAC - Rp, 4 NMAC 10.8.7, 1/01/06]

4.10.16.8 TEST EXCAVATION OF ARCHAEOLOGICAL SITES:

Test excavation is the planned examination of a portion of an archaeological site to obtain more detailed and accurate information about the characteristics and integrity of surface and subsurface cultural deposits, the distribution and density of material remains and the types of data present. Conduct test excavations to assess the research potential of the site to contribute to the knowledge of the heritage of the state, to make a determination whether the site should be listed on the state register or should be determined eligible for national register listing, or to

serve as the basis for developing an excavation plan for the site without additional test excavations. Test excavation shall be designed to meet these objectives with the least possible impact to the archaeological site and without substantially damaging or diminishing the integrity of the cultural deposits and the values and attributes of the site that contribute to its significance.

A. General permits. Test excavation may be conducted under a general permit when a test excavation plan is prepared in conformance with 4.10.16.10 NMAC and authorized pursuant to 4.10.8 NMAC. The work shall be performed in accordance with the approved test excavation plan.

B. Project-specific permits. Test excavation may be conducted under a project-specific permit when a research design is prepared consistent with the standards in 4.10.16.13 NMAC and authorized pursuant to 4.10.8 NMAC. The work shall be performed in accordance with the approved research design.

[4.10.16.8 NMAC - N, 1/01/06]

4.10.16.9 TEST EXCAVATION STANDARDS UNDER A GENERAL PERMIT:

Test excavation projects performed under a general permit shall be conducted in accordance with the following specifications and performed under the direct supervision of an archaeologist listed in the SHPO directory of qualified supervisory personnel (4.10.8.11 NMAC). Test excavations that deviate from these standards are allowed by obtaining a project-specific excavation permit pursuant to 4.10.8 NMAC.

A. Test excavation shall be conducted in a manner that the total surface disturbance resulting from the tests shall not exceed five percent (5%) of the total surface area of the site or five percent (5%) of the portion of the site that may be affected by a project, whichever is less. Test excavation that proposes to excavate more than 5% of a site constitutes excavation and shall follow the standards in 4.10.16.12 NMAC.

B. Site maps shall be produced using a high-quality optical transit, total station or alidade. Prepare a scaled map for each site and depict the grid layout, the datum, the location and shape of all features, artifact concentrations, test excavation units, auger tests, shovel tests, point-provenienced artifacts, site boundaries and the relationship of the site to nearby physiographic and man-made features. Each map shall contain the LA site number, north arrow, numbered metric scale, legend for symbols used on the map, name(s) of the recorder(s) and date of recording.

C. Controlled surface collections shall be accomplished using a grid system or by point provenience. The stan-

standard is 1-by-1 meter grid units for spatial control. Use of larger grid units is allowable only when explicitly justified and supported in the test excavation plan.

D. For systematic auger holes and similar tests, explain the placement, interval, minimum number of units and size of the area tested in square meters.

E. Test excavation of features is discouraged for features including but not limited to hearths, rock alignments, pit depressions, dispersed firecracked rock scatters, soil discolorations and other potential feature areas. Tests of features may be conducted only when essential to determine the research potential of the feature and fill shall be collected for laboratory analysis. All tests shall use hand tools and shall adopt the least destructive method to obtain the necessary information. Core the edge of a feature to determine depth, integrity and content. Complete excavation of features is prohibited.

F. Excavation shall be conducted by natural stratigraphy or arbitrary levels until natural strata are defined. Use 10-centimeter control or less for arbitrary levels. Consider maintaining 10-centimeter control within natural strata. Proposals to use levels thicker than the 10-centimeter control shall be clearly justified and supported in the test excavation plan and may be conducted only after the controlled excavation demonstrates the fill as noncultural or highly disturbed.

G. Sediments removed from all hand-excavation units shall be passed through a screen of no greater than one-quarter inch (6.35mm). Use a smaller screen size when deemed appropriate. Do not screen sediments from thermal features; collect thermal-feature fill for laboratory analysis. Additionally, sediments from a minimum of one hand-excavation unit comparably placed and of the same size as a unit that produced moderate to high artifact yields shall be passed through a screen of no greater than one-eighth inch (3.175 mm). Proposals to exclude overburden or disturbed contexts shall only be considered after controlled tests and fill screened to the standards have demonstrated that the fill is noncultural or highly disturbed. Screening all fill through one-eighth inch mesh is encouraged as standard practice.

H. Stratigraphic profiles shall be recorded by scale diagram, photographs and narrative descriptions. All strata and soil horizons shall be described using standard scientific terms. Describe the color using Munsell terminology or equivalent.

I. Mechanical excavation units may be used to define stratigraphy, locate subsurface features and cultural deposits and remove sterile overburden.

Trenches excavated with mechanical earth-moving equipment shall conform to the following standards:

(1) collect surface artifacts prior to excavation of trenches or stripping areas with mechanical earth-moving equipment;

(2) depths for mechanical excavation trenches shall conform to OSHA standards for excavation safety (29 CFR 1926, Subpart P);

(3) document the location, depth, soil profile, artifact yield and other pertinent information;

(4) clean at least one profile with a shovel or trowel and inspect the profile for cultural features and material remains;

(5) document the trench profile in narrative, profile drawing and photographs; all strata and soil horizons shall be described using standard scientific terminology; deposit descriptions include but are not limited to sediment color, texture, moisture, content, nature of inclusions, organic content and an inventory of cultural materials; describe the color using Munsell terminology;

(6) examine the excavated area after the removal of each extracted bucket load;

(7) examine backdirt for the presence of artifacts; and

(8) if cultural materials extend deeper than the bottom of the trench, systematically auger the bottom of the trench to determine approximate depth of materials.

J. The bottom of the excavation units and trenches shall be lined with landscape cloth or shall be marked in some other fashion to indicate depth of disturbance.

K. Photographs may be in black-and-white print, color print, color transparency or digitally captured images. For greatest archival stability, black-and-white prints are recommended. At a minimum, photograph features and profiles.

L. Human burials. Excavation of human burials is prohibited under test excavation. If human burials are encountered, all work shall stop immediately in the area of the discovery. Notify local law enforcement pursuant to 4.10.11 NMAC. Document the location of the remains.

M. Backfill. After completion of test excavation, backfill and restore the site as nearly as possible to the pre-excavation condition, unless other provisions have been made in the test excavation plan [4.10.16.9 NMAC - N, 1/01/06]

[For one study on the use of one-eighth inch screen size, see Carmichael and Franklin (1997), *Archaeological Screening Techniques and Their Effects on the Recovery of Lithic Artifacts*, In *Archaeology of the Jornada Mogollon*:

Proceedings from the 10th Jornada Mogollon Conference.]

4.10.16.10 TEST EXCAVATION PLANS UNDER A GENERAL PERMIT:

A. Purpose. Test excavation plans are methodological in orientation and are designed to secure specific descriptive information concerning the nature and extent of an archaeological site or area of historic and scientific interest. Test excavation plans typically do not contain statements of theoretical perspective, research questions, hypotheses for testing or other research-related issues. Those domains are part of a research design prepared in conjunction with a project-specific permit. The research implications of the work performed under a test excavation plan shall be presented and discussed as part of the conclusions in a test excavation technical report.

(1) Test excavation plans shall be specific and shall include a clear explanation of why the particular approach proposed is the best one for the project and for the site(s).

(2) The test excavation shall fulfill one or more of the following purposes:

(a) to assess the potential for additional study of the site(s) to contribute to the cultural heritage and knowledge of the state and to evaluate the significance of the archaeological site(s) pursuant to 4.10.15.16 NMAC;

(b) to assess the nature and extent of cultural deposits; and

(c) to prepare an appropriate excavation plan for sites that have the potential to contribute important historic and scientific information.

B. Components. The level of detail shall be proportionate to the scale of the project and shall conform to the test excavation standards in 4.10.16.9 NMAC. At a minimum, a test excavation plan shall include the items listed below.

(1) **Title page.** Do not obtain a NMCRIS number for the test excavation plan.

(2) **Statement of purpose and approach.** Provide a clear statement of the goals for the test excavation project and explain why the proposed strategy is appropriate to achieve the purpose. Describe the specific procedures proposed to test the site(s). If more than one site is involved, specify the activities to be performed at each site.

(3) **Current knowledge of the site(s).** Summarize previous work at the site, the site's eligibility, immediate environmental setting, land status, site size, the number and type of known features, the types and quantity of artifacts and activity areas, the potential depth of cultural

deposits in different areas of the site, site integrity and extent of disturbed versus unexcavated areas.

(4) Field strategy. Describe the specific procedures proposed to test the site. If more than one site is involved, specify the activities to be performed at each site. Discuss the methods to:

(a) determine site limits;

(b) identify, document and assess features;

(c) define surface artifact distributions, densities and intrasite activity areas; and

(d) determine the depth of cultural deposits.

(5) Specify the proposed methods to conduct the following activities:

(a) map the site;

(b) surface collections and recordation including grid size or point provenience, the minimum number of grid units to be collected and recorded and sampling fraction (percent of site area collected and recorded);

(c) hand excavations, including the type(s) of hand excavation units and site-sampling fraction (the percent of site area tested for each unit type); explain the placement, interval, minimum number of units and size of the area tested in square meters for systematic auger holes and similar tests; for test pits and trenches, specify the size (dimensions), placement and minimum number of test pits and trenches to be excavated; and

(d) mechanical excavation including the type, placement and minimum number of units trenches and their length, width and depth; specify the percent of site area to be tested including horizontal scraping, with mechanical equipment.

(6) Specialized samples or specimens. Specify the proposed methods and conditions under which radiocarbon, pollen and other samples or specimens will be collected, processed and analyzed.

(7) Human burials. Discuss the procedures to be followed if human burials are encountered; excavation of human burials is prohibited.

(8) Contingencies. Discuss the proposed procedures and notification in the event of unanticipated discoveries.

(9) Backfill. Discuss the proposed procedures to backfill and stabilize the site(s).

(10) Laboratory analyses. Discuss the descriptive and comparative analytical methods proposed for each artifact class and each type of specimen expected to be recovered.

(a) Include the proposed classification system that will be used to describe the assemblage content and specific attributes to be observed.

(b) Include copies of all analysis

forms in the appendix if they differ from the forms provided in the permit application submitted pursuant to 4.10.8 NMAC.

(c) Discuss sampling strategy and sampling fraction if all artifacts and specimens collected will not be analyzed.

(11) Schedule. Explain the expected time frame to implement the field, analysis and reporting phases of the project.

(12) Personnel. Identify all supervisory personnel and analysts who will perform the fieldwork, laboratory analyses and prepare the report. Include subcontractors if any are proposed and off-site laboratories for specialized analyses. If specific personnel or subcontractors have not been identified for all activities, provide a list of personnel or subcontractors who may be retained or list the minimum qualifications of the personnel that will be retained.

(13) Curation. Identify the proposed repository; if the repository will not be the MIAC, provide justification pursuant to 4.10.8 NMAC.

(14) References cited.

(15) Appendices as needed.

[4.10.16.10 NMAC - N, 1/01/06]

4.10.16.11 TEST EXCAVATION UNDER A PROJECT-SPECIFIC PERMIT:

A. Test excavation shall be conducted under a project-specific permit when the applicant:

(1) proposes to substitute alternate test excavation methods for the standards in 4.10.16.9 NMAC;

(2) proposes test excavation on state trust land undertaken independent of an activity authorized by rights of way, easements, grazing leases, business leases, oil and gas leases, mineral leases or other authority to enter state trust land; or

(3) does not have a general permit that authorizes test excavation.

B. The applicant shall prepare a research design consistent with 4.10.16.13 NMAC.

[4.10.16.11 NMAC - N, 1/01/06]

4.10.16.12 EXCAVATION STANDARDS:

A. Excavation shall be designed to recover information about those significant values for which a property is considered eligible for inclusion in the national register or listed on the state register. Excavation shall be guided by an explicit research design that identifies specific research topics, research questions and appropriate analyses. Field studies may include collection of surface and subsurface artifacts, subsurface tests to identify buried cultural lenses and features, controlled excavation of features and activity areas, and collection of specialized samples and

specimens (radiocarbon, archeomagnetic, dendrochronological, flotation, pollen, paleo-environmental, source materials). Use of mechanical earth-moving equipment may be appropriate. Laboratory analyses and analytical tasks include processing, cataloguing, analyses and curation of materials, analysis of specialized samples and preparation and production of technical and popular reports summarizing the results of the excavation program. All excavation and shall be performed under the direct supervision of an archaeologist listed in the SHPO directory of qualified supervisory personnel (4.10.8.11 NMAC).

B. The research design establishes the standards for excavation. Example standards are provided below. Exceptions to these standards may be proposed but shall be explained and justified in the research design.

(1) Site maps shall be produced with high-quality optical transit, total station or alidade. Prepare a map for each site and depict the grid layout, the location of the datum, the location and shape of all features, artifact concentrations, test excavation units, point-provenienced artifacts, site boundaries and the relationship of the site to nearby physiographic and man-made features. Each map shall contain the site number, north arrow, numbered metric scale, legend for symbols used on the map, name(s) of the recorder(s) and date of recording.

(2) Controlled surface collections shall be accomplished using a grid system or by point provenience. The size of the grid system is determined by the needs of the research design and shall be clearly justified and supported. Use of a grid system with 1-by-1 meter spatial control is standard. Maintain tight spatial control.

(3) All features visible on the surface shall be completely excavated unless the research design proposes a sampling strategy. Any decision to sample features shall be fully explained and justified in the research design. Consider whether the sample will produce sufficient specimens and special samples for analysis and if the sampling will provide sufficient relevant data to address the research questions. Features shall be excavated in profile in order to obtain a view of the cross section and shall be recorded in three dimensions. Profiles of the cross section shall be recorded by scale diagram and color transparencies. Plan view and cross section drawings of each excavated feature shall be prepared. All structures and features shall be recorded noting size, shape, construction detail, fill, probable function and relationship to other features and artifact activity areas. Separate feature forms shall be prepared for each feature. All features shall be numbered and labeled to correspond to the feature form.

(4) Excavation shall be conducted by natural stratigraphy or arbitrary levels until natural strata are defined. Proposals to use levels greater than 10-centimeter control shall be clearly justified and supported in the research design. Consider maintaining 10-centimeter control within natural strata.

(5) Sediments removed from all hand-excavation units shall be passed through a screen of no greater than one-quarter inch (6.35mm). Consider using a smaller screen size. Do not screen sediments from thermal features; collect thermal-feature fill for laboratory analysis. Additionally, sediments from a minimum of one hand-excavation unit comparably placed and of the same size to a unit that produced moderate to high artifact yields shall be passed through a screen of no greater than one-eighth inch (3.175 mm). Proposals to exclude sediments from being screened shall be clearly justified and supported in the research design.

(6) Stratigraphic profiles shall be recorded by scale diagram, photographs and narrative descriptions. Deposit descriptions include but are not limited to sediment color, texture, moisture content, nature of inclusions, organic content, and an inventory of cultural materials, if any. Describe the color using Munsell terminology.

(7) Mechanical excavation units may be used to define stratigraphy, locate subsurface features and cultural deposits and remove sterile overburden. Trenches excavated with mechanical earth-moving equipment shall conform to the following standards:

(a) collect surface artifacts prior to excavation of trenches or scraping areas with mechanical earth-moving equipment;

(b) depths for mechanically excavated trenches shall conform to OSHA standards for excavation safety (29 CFR 1926, Subpart P);

(c) document the location, depth, soil profile, artifact yield and other pertinent information;

(d) clean at least one profile with a shovel or trowel and inspect the profile for cultural features and material remains;

(e) document the profile in narrative, profile drawing and photographs; deposit descriptions include but are not limited to sediment color, texture, moisture content, nature of inclusions, organic content, and an inventory of cultural materials, if any;

(f) examine the excavated area after the removal of each extracted bucket load; and

(g) examine backdirt for the presence of artifacts.

(8) **Post-excavation mechanical excavation.** Mechanical stripping or scrap-

ing may be employed following excavations. The stripping serves the purpose of disclosing features not found during the testing, trenching or excavation and provides a check on the reliability of the excavation sampling design. Features exposed during the mechanical stripping shall be mapped in relation to the site datum. All features shall be fully described and a sample of datable specimens and artifacts shall be collected. If all features are not proposed to be excavated, explain how features will be chosen for excavation and why. Sufficient analytical studies shall be performed to interpret function.

(9) The bottom of the excavation units and trenches shall be lined with landscape cloth or marked in some other fashion to indicate depth of disturbance, unless the site will be destroyed by construction.

(10) Photographs may be in black-and-white print, color print, color transparency or digitally captured images. For greatest archival stability, black-and-white prints are recommended. At a minimum, photograph features and profiles.

(11) **Human burials.** If human burials are encountered, all work shall stop immediately in the area of the discovery. Notify local law enforcement pursuant to 4.10.11 NMAC. Do not excavate human burials if they can be left in place. If excavation of human burials proves necessary, such excavation shall only be conducted pursuant to 4.10.11 NMAC.

(12) **Backfill.** After completion of excavation, the site shall be backfilled and restored as nearly as possible to the pre-excavation condition, unless other provisions have been made in the permit application pursuant to 4.10.8 NMAC.

[4.10.16.12 NMAC - N, 1/01/06]

4.10.16.13 RESEARCH DESIGNS FOR EXCAVATION PROJECTS:

A. Purpose. A research design explains the purpose of the project, the scope of work proposed and how the fieldwork and analysis of the archaeological site(s) or area(s) of historic and scientific interest contributes to a greater understanding of the cultural heritage of the state. Research designs shall take into account broad regional research needs and strive to fill in gaps in current state of knowledge. Research designs shall be realistic and attainable from the nature of the site(s) to be investigated and shall be flexible enough to accommodate unanticipated discoveries. At a minimum, a research design shall include the following components and shall be prepared consistent to the excavation standards in 4.10.16.12 NMAC.

B. Components. The length of each section shall be appropriate

to the complexity and scale of the study.

(1) **Title page.** Do not obtain a NMCRIS number for research designs.

(2) **Table of contents, lists of figures and tables.** Prepare for documents with more than 10 pages of text.

(3) **Purpose of the study.** Provide a succinct overview of the proposed study including:

(a) goals, name and brief description of the history of the project;

(b) list of sites to be studied by LA number and land status;

(c) the project sponsor (client), state agency and other land jurisdictions if any; and

(d) project location and project map depicting the location and boundaries of the site(s) to be excavated by LA site number, land ownership boundaries, north arrow, key and name of appropriate 7.5-minute USGS source quadrangle(s).

(4) **Research context.** The context provides a foundation for the development of specific research questions. Scale the discussion to the complexity, size and limitations of the proposed study. The length of each discussion may vary but include the following elements:

(a) review of pertinent literature including, but not limited to, statewide and regional cultural-historical overviews and historic contexts, research designs, published archaeological, ethnographic and historical monographs and articles, cultural resource management technical reports and field reports sufficient to identify gaps in the current state of knowledge;

(b) query NMCRIS database and map server to identify sites of similar types and age in the project area to establish baseline information for comparative purposes;

(c) discussion of the theoretical orientation and assumptions guiding the proposed research;

(d) identification of general research problems and topics relevant to the region; discuss the research problems in the context of the culture history and knowledge of the area and current research gaps; draw on existing knowledge of research conducted at similar types of sites near the project area; and

(e) specification of research questions; provide a clear link between the questions and the theoretical assumptions.

(5) **Current knowledge of the site(s).** Summarize previous work at the site, the site's national register eligibility, immediate environmental setting, site size, the number and type of known features, the types and quantity of artifacts and activity areas, the potential depth of cultural deposits in different areas of the site, and site integrity and extent of disturbed versus unexcavated areas.

(6) Specific research questions.

Provide a clear link between the research questions and the general research problems. Identify the specific kinds of data needed to address the questions and explain how the site(s) to be excavated are likely to contain data relevant to address the questions. Take into account current knowledge of the site or site type in this discussion.

(7) Specific procedures to test or excavate the site(s). If more than one site is to be excavated, specify the activities to be performed at each site. Discuss the proposed methods to:

(a) determine site limits;

(b) identify, document and assess features;

(c) define surface artifact distributions, densities and intrasite activity areas; and

(d) determine the depth of cultural deposits.

(8) Procedures to operationalize the plan. At a minimum, discuss:

(a) procedures used to map the site;

(b) methods for surface collections and recordation; specify the method of collection, grid size or point provenience, in-field analysis if proposed, the minimum number of grid units to be collected and recorded and sampling fraction (percent of site area to be collected and recorded);

(c) the type(s) of hand excavation units and sampling fraction (the percent of site area to be excavated for each unit type); for systematic auger holes, explain the placement, interval, and minimum number of units and size of the area excavated in square meters; for excavation units and trenches, specify the size (dimensions), placement and minimum number to be excavated;

(d) the type, placement and minimum number of mechanical excavation units (trenches) and their length, width and depth; specify the percent of site area to be excavated with mechanical equipment including horizontal scraping;

(e) specialized samples (radiocarbon, pollen and other samples or specimens); specify the methods and conditions under which samples will be collected, processed and analyzed;

(f) procedures if human burials are encountered consistent with 4.10.11 NMAC;

(g) procedures for monitoring during construction will be implemented; the proposed monitoring shall be consistent with the standards in 4.10.17 NMAC; and

(h) procedures for notification in the event of contingencies for unanticipated discoveries.

(9) Backfill. Discuss procedures to backfill and stabilize the site.

(10) Analytical procedures.

Provide a specific link between the research questions, data needed to address the research questions and proposed analytical procedures to generate the necessary data from observations and material remains recovered from the site. Specify the types, quantities and quality of data needed to address the research questions. Discuss the descriptive and comparative analyses for each class of artifact and type of specimen expected to be recovered from the sites. Include the proposed typology that will be used to describe the assemblage content and specific attributes to be observed. Consider the kinds of measurement that will be used, justifications for sampling and minimum thresholds for statistical validity. Include copies of all analysis forms in the appendix if they differ from the forms provided in the application submitted pursuant to 4.10.8 NMAC. Discuss sampling strategy and sampling fraction if all artifacts and specimens collected will not be analyzed. Explain the provisions that will be made for the collection and analysis of data that are not directly related to your stated research problems. Minimally, a representative sample of all recovered materials shall be analyzed.

(11) Schedule. Explain the expected time frame to implement the field, analysis and reporting phases of the project.

(12) Personnel. Identify all supervisory personnel and analysts who will perform the fieldwork, laboratory analyses and prepare the report. Include subcontractors if any are proposed and off-site laboratories for proposed specialized analyses. If specific personnel or subcontractors have not been identified for all activities, provide a list of personnel or subcontractors who may be retained, or list the minimum qualifications of the personnel that will be retained.

(13) Curation. Identify the proposed repository; if the repository will not be the MIAC, provide justification pursuant to 4.10.8 NMAC.

(14) References cited.

(15) Appendices, as needed.

[4.10.16.13 NMAC - N, 1/01/06]

4.10.16.14 PRELIMINARY

REPORTS: A preliminary report may be prepared for excavation and test excavation projects when requested by the state agency or included in the test excavation plan or research design. Letter reports are prohibited. At a minimum, a preliminary report shall include the following information.

A. Brief description of the project. Identify project location, the NMCRIS number, LA site numbers for tested or excavated sites, state agency and project sponsor, list of project personnel, dates of fieldwork and the state permit number.

B. Project map. Show

land ownership boundaries, project area boundaries, boundaries of all tested or excavated sites, north arrow, name of USGS 7.5 minute (1:24,000) quadrangle map and key to map symbols.

C. Field studies. Discuss field activities performed at each site and condition of site at conclusion of tests or excavations. Information may be summarized in a table. Include the type of excavation units, the number of units excavated, excavation depth, and the types and quantity of artifacts recovered.

D. Site map. Include a scaled site map with site boundaries, property ownership boundaries, site datum, location of all collection units, point-provenienced artifacts, hand excavation units, auger holes, shovel tests and mechanical excavation units.

E. Changes in the plan. Identify departures from the approved test excavation plan or research design. Identify and explain substantial differences between the work proposed and the work that was performed in the field. Identify and explain any proposed changes in analysis strategy.

F. Final report schedule. Indicate the proposed date when the final report will be submitted to the state agency if it differs from the schedule approved in the research design or test excavation plan.

G. Report review. The report shall be reviewed in conformance with 4.10.8.18 NMAC.

[4.10.16.15 NMAC - N, 1/01/06]

4.10.16.15 FINAL TECHNICAL

REPORT STANDARDS: These requirements constitute the minimal standards for the reports on the test excavation or excavation of sites located on state land. The length of each section and discussion shall be appropriate to the complexity and scale of the project. State agencies may have additional reporting requirements.

A. Title Page. The title page shall contain the following information:

(1) the NMCRIS number in the upper left hand corner;

(2) the report title, author(s) and the principal investigator, if different from the author;

(3) the name of the organization that performed the work;

(4) the agency or agencies requiring and receiving the report;

(5) the state permit number and other permit numbers for the project; and

(6) the report date (month, day, year).

B. NMCRIS investigation abstract. Complete all sections of the NMCRIS investigation abstract, which serves as the report abstract.

C. Table of contents

(required only for reports with more than 10 pages of text). Include:

- (1) major report sections, sub-headings and appendices with page numbers;
- (2) a list of figures and plates with page numbers; and
- (3) a list of tables with page numbers.

D. Introduction and description of project. State the purpose of the investigation and include a brief description of the following:

- (1) the name(s) of the project sponsor(s) or funding source(s);
- (2) the nature, purpose and location of the project and a list of the excavated sites;
- (3) a description of the site(s) prior to excavation and a discussion of any previous work at the site(s);
- (4) indicate if the project is being implemented in phases and identify the relationship of the current work to the overall project; and
- (5) include a table that lists all of the project sites with field numbers, LA numbers and land status; include a brief description of each site and the work undertaken in this table.

E. Environmental setting. The length of the discussion shall be appropriate to the complexity and scale of the excavation project.

(1) Describe the natural environment. Describe the topography, geology and soils; contemporary flora and fauna; current climatological conditions; discuss the effect of current environmental conditions and past environmental processes (such as erosion or deposition) on the visibility and preservation of archaeological remains.

(2) Describe the cultural environment. Identify modern land use impacts such as mining, logging, agricultural activities or urban development and discuss the effect that modern land uses have on the visibility and integrity of archaeological sites and other cultural properties. Note evidence of vandalism or looting.

(3) Include photographs of the physical or cultural environment of the project area as appropriate.

F. Culture history and literature review.

(1) Discuss the past human occupation of the general area in which the project was conducted referencing established culture-historical frameworks or chronologies for each period relevant to the sites investigated. Reference statewide and regional cultural historical overviews, regional research designs, published archaeological, ethnographic and historical monographs and articles, cultural resource management technical reports, field reports and

historic maps and records and other archival sources as appropriate, given the results of the project.

(2) Present a culture history of the area with reference to the previous archaeological work in the vicinity and types of sites investigated during the project. Culture histories shall be specific to the general project area and region and sites investigated.

G. Test excavation plan or research design. Summarize major elements of the approved test excavation plan or approved research design. Explain any significant differences between the work proposed and the work performed in the field or during analysis. If applicable, explain the relationship of your project to the research design of an on-going or larger mitigation or research project. If the site(s) being excavated represent a sample of a larger population of sites within a project area, describe the methods used to derive the sample.

H. Field methods, data collection and analysis strategies. Discuss the methods used to:

- (1) map the site(s);
- (2) record the features;
- (3) excavate the units. Describe the implements, size of screens, size of excavation units employed. Define arbitrary or natural excavation units and levels;
- (4) collect and analyze the artifacts from the surface and from the excavation units;
- (5) collect and analyze chronometrical, botanical, faunal and other specimens and the techniques used to preserve these materials; and
- (6) explain the extent to which each of these and any other special techniques were employed.

I. Data presentation for each site.

(1) Describe the layout, configuration and appearance of the site(s) including a description of any pre-excavation surface remains.

(2) Describe the specific environmental setting of the site(s) supplemented with appropriate illustrations and references to relevant publications.

(3) Describe each excavation unit with regard to stratigraphy and contents. Multiple units with the same stratigraphic sequence may be grouped. The relationship between the excavation units shall be discussed.

(4) Present the results of the analyses in the context of the test excavation plan or the research questions in the research design. Include a summary of the numbers of artifacts by category and provenience. Differentiate between surface and subsurface materials. Discuss the types of

analyses conducted for each artifact class and any sample and present the results by analytical units or strata. Provide narrative and tabular summaries for chronometrical, botanical and other specialized analyses. Integrate the results of these analyses in the discussion of the results of the investigation.

J. Results and recommendations. Summarize the results of the study and contributions to the knowledge of the cultural heritage of the region and the state.

(1) Evaluate project results with regard to the approved test excavation plan or research design. Discuss substantive deviations from original plan.

(2) Discuss the cultural affiliation of the site(s) and the relationship of the site(s) to the culture history of the area.

(3) Provide a synopsis of the data recovered from the excavations, the artifacts and samples.

(4) Discuss and analyze the interface between archaeological and documentary evidence for historical archaeological sites.

(5) For test excavation projects, evaluate the research potential of the site(s). This evaluation will serve as the basis for developing a research design for excavation, if necessary.

(a) Identify future research potential. Discuss research issues, problems or topics that can be realistically addressed through future study. The discussion shall be synthetic and comprehensive in scope, oriented toward realistic goals. Document how the research potential has been determined and why the current level of study is not sufficient to address or resolve these issues. Research questions shall take into account broad regional research needs and shall strive to fill gaps in current state of knowledge. Place the sites within the context of the currently known pattern of archaeological remains in the project area. Discuss recommendations with the state agency prior to including in the report.

(b) Discuss whether or not, in the opinion of the investigator, the site is or continues to be eligible for the national register and whether the site should be placed on the state register. Apply the criteria for integrity and significance to evaluate each property pursuant to 36 CRF 60.4. Identify the property as a district, site, building, structure or object. Indicate whether the property should be listed on the state register or should be determined as eligible for national register listing pursuant to 4.10.15.16 NMAC.

(6) For excavation projects performed under a research design:

(a) evaluate the success of the research design and any significant devia-

tions during the field or analyses;

(b) discuss what was learned from the excavation and analyses in relation to the pre-existing archaeology and history of the area. Place the sites within the context of the currently known pattern of archaeological remains in the project area. If the findings were not consistent with the known culture history of the area, possible explanations for these anomalous findings must be explored; and

(c) discuss how much of the site is preserved, unexcavated and undisturbed. Suggest future research and management strategies.

K. Illustrations and photographs.

(1) Include a map showing the location of the project within the state of New Mexico.

(2) Include site maps, which shall be drawn to scale at a legible size and contain a north arrow (true or magnetic) and scale. All excavation units (rooms, trenches, test pits, collection areas) shall be labeled on the map and accurately related to the text. Previously excavated portions of the site shall be clearly identified. Remaining, unexcavated portions of the site shall also be shown; all relevant natural, archaeological and modern features shall be clearly marked as well as any areas of disturbance.

(3) Plans, drawings and photographs of stratigraphic profiles with explanations shall be included. Illustrations of representative, unusual and unique features or other manifestations shall be included as appropriate to the complete understanding of the narrative discussion.

(4) Illustrations and photographs of unusual and diagnostic artifacts are required as necessary to insure complete understanding.

L. References cited.

M. **Appendices.** At a minimum, provide:

(1) a project map depicting the location and boundaries of the site(s) tested or excavated by LA site number, land ownership boundaries, north arrow (true or magnetic), key to map symbols and name of appropriate USGS 7.5-minute (1:24,000) topographic quadrangle(s); mark as confidential all pages that discuss or depict exact locations of archaeological sites pursuant to Section 18-6-11.1 NMSA 1978;

(2) a list of collected artifacts and specimens; and

(3) reports from laboratories and consultants.

N. Attachments.

(1) **Site records.** Submit updated LA archaeological site records for each site consistent with the standards in 4.10.15 NMAC. Include a site plan map and a reproduction of a USGS 7.5-minute (1:24,000)

topographic quadrangle map showing the site location(s) and attach to each LA site form. Include any other site-specific records generated, such as artifact analysis forms. If coded analysis forms are attached, place a copy of the code key with every site form.

(2) **Photographic materials.** Do not append photographs to site forms. All archivally packaged photographic materials and photographic logs shall be submitted to the approved curatorial facility consistent with the standards for that repository.

(3) **Oversize maps and plans.** Attach oversize (greater than 11x17 inches) maps and plans of individual sites to the survey report, not to the LA site record. Oversize project and survey area maps should be attached as appendices and not attached to the body of the report.

(4) **Other location materials.** Engineering plan maps, aerial photographs and other non-standards source graphics may be attached to the report.

O. **Report review.** The report shall be reviewed in conformance with 4.10.8.18 NMAC. The permittee shall curate the collections in accordance with the procedures outlined in 4.10.8.18 NMAC. [4.10.16.15 NMAC - N, 1/01/06]

4.10.16.16 P O P U L A R REPORTS. Write a short popular summary suitable for distribution in a newspaper, newsletter or magazine for each excavation project. A popular report is optional for test excavation projects, but is encouraged. The purpose of the report is to provide information to the interested general public about the state's heritage and contributions from on going research and studies on state land. The public disclosure of the location of archaeological sites on state and private lands is prohibited by Section 18-6-11.1 NMSA 1978. The public disclosure of the location of archaeological sites on federal lands is prohibited by 36 CFR 296.18. The report may be brief, approximately 250 to 500 words in length. Longer articles or other types of public education and outreach approached may be used if proposed in the excavation plan or research design. Include photographs or graphs as appropriate. The popular report shall be submitted with to the state agency with the final technical report. [4.10.16.16 NMAC - N, 1/01/06]

4.10.16.17 CURATION OF COLLECTIONS AND RECORDS: All material remains collected during the excavation or test excavation project and associated written and photographic records resulting from the project, regardless of whether or not all of the work specified in the test excavation plan or research design was completed, shall be curated consistent with 4.10.8.18 and 4.10.8.19 NMAC.

[4.10.16.17 NMAC - N, 1/01/06]

4.10.16.18 DEVIATIONS: The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.16.18 NMAC - N, 1/01/06]

HISTORY OF 4.10.16 NMAC:

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

CPRC 82-R1, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 5-28-82.

CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, filed 3-26-87.

History of Repealed Material: Rule 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97), repealed 10/01/05.

Other History:

CPRC Rule 87-8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 3-26-87) was renumbered and reformatted to 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations, effective 11/15/97.

That applicable portion of Rule 4 NMAC 10.8, Regulations Pertaining to the Issuance of Permits to Conduct Archaeological Investigations (filed 11/03/97) was renumbered, reformatted and replaced by 4.10.16 NMAC, Standards for Excavation and Test Excavation, effective 1/01/06.

NEW MEXICO CULTURAL PROPERTIES REVIEW COMMITTEE

TITLE 4 C U L T U R A L RESOURCES
CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION
PART 17 STANDARDS FOR MONITORING

4.10.17.1 ISSUING AGENCY: Cultural Properties Review Committee. Contact State Historic Preservation Division, Department of Cultural Affairs.

[4.10.17.1 NMAC - N, 1/01/06]

4.10.17.2 SCOPE: This rule applies to all public and private entities, including but not limited to, individuals, corporations, partnerships, trusts, associations, educational institutions, foundations, museums and any agency of the federal government conducting or proposing to conduct archaeological investigations on any lands owned, controlled or operated by the state of New Mexico.

[4.10.17.2 NMAC - N, 1/01/06]

4.10.17.3 STATUTORY AUTHORITY: Section 18-6-5 (NMSA 1978) of the Cultural Properties Act.

[4.10.17.3 NMAC - N, 1/01/06]

4.10.17.4 DURATION: Permanent.

[4.10.17.4 NMAC - N, 1/01/06]

4.10.17.5 EFFECTIVE DATE: January 1, 2006, unless a later date is cited at the end of a section.

[4.10.17.5 NMAC - N, 1/01/06]

4.10.17.6 OBJECTIVE: To establish standards and procedures for monitoring land-disturbing projects that affect or may affect archaeological sites, cultural properties or areas of historic and scientific interest on lands owned, controlled or operated by a department, agency, institution or political subdivision of the state.

[4.10.17.6 NMAC - N, 1/01/06]

4.10.17.7 DEFINITIONS:

A. "Archaeological site" or "site" means a location where there exists material evidence of the past life and culture of human beings in the state. A significant archaeological site typically is 50 or more years old. Examples of archaeological sites include without limitation campsites, pueblos, homesteads, artifact scatters, resource procurement or processing areas, agricultural fields, locales with one or more features in association with other cultural materials, and locales that have the potential for subsurface features or cultural deposits.

B. "Areas of historic and scientific interest" means areas lacking surface evidence of cultural properties but where there is a high probability of finding subsurface material remains and cultural deposits or areas suitable for geomorphological or paleoenvironmental study.

C. "Committee" or "CPRC" means the cultural properties review committee, created pursuant to Section 18-6-9 of the Cultural Properties Act.

D. "Cultural property" or "cultural resource" means a structure,

place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

E. "Excavation" means displacing, disturbing or moving earth, soil, dirt, other deposits or material remains from their current contexts or significant orientation in, or on, the ground within the boundaries of an archaeological site, isolate or area of historic and scientific interest using hand tools or mechanical earth-moving equipment.

F. "Historic preservation division" or "HPD" means the division within the department of cultural affairs created pursuant to Section 18-6-8A of the Cultural Properties Act.

G. "Human burial" or "unmarked human burial" means a human body or human skeletal remains and includes any funerary object, material object or artifact buried, entombed or sepulchered with that human body or skeletal remains.

H. "Isolate" means a single object or artifact or a few artifacts greater than 50 or more years old that lack clear association. Examples of isolates include a single flake, projectile point, potsherd, sherds from a single broken pottery vessel, pieces of glass from a single bottle or a single feature that lacks integrity.

I. "Material remains" means any tangible evidence of past human life or activities. Such evidence includes without limitation:

(1) naturally occurring objects or raw materials extracted for use in the production of human-made objects or for other uses by humans that can be found within an archaeological site, or another context from which intended or actual human use can be reasonably inferred;

(2) items manufactured or modified by humans, including whole or fragmentary tools, implements, containers, and other objects such as pottery, ceramics, basketry, cordage, weavings, textiles, glassware, flaked stone, ground stone, pecked stone, worked bone, metal, wood, hide, feathers and pigments;

(3) byproducts, waste products and debris resulting from the manufacture or use of human-made items or from the human use of natural materials;

(4) organic material deposited through human actions, organic material remaining from the decay of perishable objects manufactured or modified by humans, and organic material deposited through natural processes when found within an archaeological site including without limitation soil or sediment samples, botanical and animal remains and coprolites; or

(5) human remains including without limitation bone, mummified flesh,

teeth, the remains of cremations, any associated artifacts and objects, and the soil, sediments, or other matrix in which the human skeletal or mummified remains and associated artifacts and objects were deposited or are now associated.

J. "Monitoring" means the presence of and visual inspection by a supervisory archaeologist on the ground immediately prior to and during ground-disturbing actions to ensure site protection, avoidance of site deposits or recovery of information from newly discovered cultural properties.

K. "Museum of Indian arts and culture-laboratory of anthropology" or "MIAC" means the museum division within the department of cultural affairs, museum of New Mexico, that serves as the repository for archaeological materials and associated records and documents taken or collected from state land.

L. "New Mexico cultural resource information system" or "NMCRIS" means the statewide archaeological and cultural properties database maintained by archaeological records management section (ARMS) within the historic preservation division that maintains the database and associated records and documents pursuant to Section 18-6-7A of the Cultural Properties Act.

M. "Permit" means the written authorization required for all public and private entities to conduct archaeological investigations of a particular kind, within a defined geographic location and for a specified period of time, all of which are specified in the written authorization.

N. "State agency" means a department, agency, institution or political subdivision of the state.

O. "State archaeologist" means the archaeologist designated pursuant to Section 18-6-15 of the Cultural Properties Act.

P. "State historic preservation officer" or "SHPO" means the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act and serves as the director of the historic preservation division.

Q. "State land" means property owned, controlled, or operated by a department, agency, institution or political subdivision of the state. Examples of state land, include but are not limited to: state trust lands managed by the commissioner of public lands; New Mexico department of transportation rights of way and easements; state parks; state monuments; state game and fish lands; county and municipal property including open space areas, leased lands, and rights of way; and lands owned or managed by public schools and state colleges and universities.

[4.10.17.7 NMAC - N, 1/01/06]

4.10.17.8 MONITORING:

There are two types of monitoring activities: monitoring to implement site avoidance or site protection measures, and monitoring of construction activities through an archaeological site, other cultural property or areas of historic and scientific interest where there is high probability of finding subsurface features and cultural deposits. Both types of monitoring shall be conducted under a permit issued by the CPRC, with the concurrence of the state archaeologist and SHPO, authorizing monitoring activities.

A. General permits.

Monitoring may be conducted under a general permit when applicants propose to:

(1) supervise implementation of site avoidance or protection measures pursuant to 4.10.17.10 NMAC and authorized pursuant to 4.10.8 NMAC; or

(2) oversee land-disturbing projects when a monitoring plan is prepared in conformance with 4.10.17.11 NMAC and authorized pursuant to 4.10.8 NMAC.

B. Project-specific permits. Monitoring may be conducted under a project-specific permit when a monitoring plan is prepared in conformance with 4.10.17.11 NMAC and authorized pursuant to 4.10.8 NMAC.

[4.10.17.8 NMAC - N, 1/01/06]

4.10.17.9 PERSONNEL REQUIREMENTS:

A. The SHPO shall maintain a directory of qualified supervisory personnel including but not limited to archaeologists who act in the capacity of principal investigator, project director, field supervisor and crew chief (4.10.8 NMAC).

B. All monitoring activities on state land shall be performed by an archeologist listed in the SHPO directory. This individual shall be on site and physically present on the ground immediately prior to and during all surface-disturbing actions to ensure site protection, avoidance of site deposits, identification of new cultural deposits and features or recovery of information from newly discovered cultural properties.

[4.10.17.9 NMAC - N, 1/01/06]

4.10.17.10 MONITORING FOR SITE AVOIDANCE OR PROTECTION:

A. The state agency determines when monitoring is needed to supervise implementation of site avoidance or protection measures.

(1) The state agency may reach this determination in discussion with the SHPO or as part of consultation with the SHPO pursuant to Section 18-6-8.1 of the Cultural Properties Act NMSA 1978,

Section 18-4-7 of the Prehistoric and Historic Sites Preservation Act NMSA 1978, Section 18-6A-5 of the Cultural Properties Protection Act NMSA 1978, or Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470f).

(2) The permittee may provide a written request to the state agency to conduct monitoring. The request shall state for whom the monitoring is proposed, why the monitoring is necessary, where the project is located, a list of archaeological sites, other cultural properties or areas of historic and scientific interest to be protected, the method of protection and the expected date(s) for the monitoring. If the state agency is the project sponsor or has directed the permittee to conduct the work, no written request of the agency is required. If the state agency does not have an archaeologist on staff, the permittee shall submit the request to HPD with a letter from the state agency approving consideration of the request.

(3) All monitoring activities require the approval of the state agency or HPD if the state agency does not have an archaeologist on staff prior to initiating the activity.

B. Report. Document the results of the monitoring and submit the report to the state agency for review and comment pursuant to 4.10.8.18 NMAC. Letter reports are prohibited. Submit the following information as a report:

(1) a NMCRIS investigation abstract including the block for monitoring;

(2) append a copy of a USGS 7.5-minute (1:24,000) USGS topographic quadrangle map with the locations of all archaeological sites, other cultural properties and areas of historic and scientific interest that were monitored during the project; and

(3) append an updated laboratory of anthropology (LA) archaeological site record or a new LA archaeological site record pursuant to 4.10.15 NMAC if new features, material remains or other cultural resources are exposed or noted during the monitoring; additional forms may be used at the discretion of the permittee.

[4.10.17.10 NMAC - N, 1/01/06]

4.10.17.11 MONITORING OF ARCHAEOLOGICAL SITES AND AREAS OF HISTORIC AND SCIENTIFIC INTEREST:

A. Purpose. When the purpose of the monitoring is to observe ground-disturbing activities through an archaeological site, cultural property or in an area of historic and scientific interest, the permittee shall develop a monitoring plan to guide the steps to be taken in the event features and cultural deposits are exposed by the construction activities. The plan shall

detail the proposed field studies to document the discovery and assess its integrity and information potential. The plan shall also discuss proposed data recovery measures, including but not limited to, excavation of exposed features and associated deposits, collection of material remains, field and laboratory analyses, and preparation of a report on the findings.

B. Monitoring plan. The level of detail shall be proportionate to the scale of the project and shall be executed in conformance with the excavation standards in 4.10.16 NMAC. At a minimum, the monitoring plan shall include the following components listed below.

(1) Include a statement of the purpose for the monitoring project.

(2) Discuss the general project location, project sponsor or client and land owners.

(3) Prepare a project map with the location of all archaeological sites, other cultural properties or limits of areas of historic and scientific interest; include land ownership boundaries if more than one owner, north arrow (true or magnetic north), name of USGS 7.5-minute (1:24,000) quadrangle and key to map symbols; identify archaeological sites by LA site number.

(4) Provide a succinct discussion of each site or area to be monitored, noting the types of features, distribution of material remains, and the site's immediate environmental setting as it informs on the proposed monitoring activity.

(5) Explain the overall strategy to document discoveries and recover information. Discuss procedures to:

(a) identify and record features and cultural deposits;

(b) excavate features and associated deposits, including the size of excavations units, screen size and use of arbitrary or natural levels;

(c) collect artifacts and samples for laboratory analysis;

(d) recording system, including examples of forms if not on file with HPD;

(e) provisions to be followed if human burials are exposed pursuant to 4.10.11 NMAC;

(f) backfill and stabilize the site; and

(g) process and analyze artifacts and specimens.

(6) **Schedule.** Explain the expected time frame to implement the field, analysis and reporting phases of the project.

(7) **Personnel.** Identify all supervisory personnel and analysts who will perform the fieldwork, laboratory analyses and prepare the report. Include subcontractors if any and off-site laboratories for specialized analyses. If specific personnel or subcontractors have not been identified for all activities, provide a list of personnel or sub-

contractors who may be retained, or list the minimum qualifications of the personnel that will be retained.

(8) Curation. Identify the proposed repository; if the repository will not be the MIAC, provide justification pursuant to 4.10.8 NMAC.

(9) References cited.

(10) Appendices as needed.

[4.10.17.11 NMAC - N, 1/01/06]

4.10.17.12 STANDARDS FOR MONITORING REPORTS UNDER A PLAN:

Prepare a monitoring report consistent with the standards in this section for review by the state agency and HPD for all monitoring projects conducted under an approved monitoring plan.

A. Preliminary report. A preliminary report may be prepared when requested by the state agency or if specified in the monitoring plan. At a minimum, include the following information.

(1) Brief description of the project. Identify project location, the NMCRIS number, LA site numbers for monitored sites, state agency and project sponsor, list of project personnel, dates of fieldwork and the state permit number.

(2) Project map. Show land ownership boundaries, project area boundaries, boundaries of all tested or excavated sites, north arrow (true or magnetic), name of source USGS 7.5 minute (1:24,000) quadrangle map and key to map symbols.

(3) Monitoring activities. Discuss activities performed at each site and the condition of site at the conclusion of tests or excavations. Information may be summarized in a table.

(4) Site map. Include a scaled site map for each site with site boundaries, property ownership boundaries, site datum, location of all collection units, point-provenienced artifacts, hand excavation units, auger holes, shovel tests and units excavated with mechanical earth-moving equipment.

(5) Changes in the plan. Identify departures from the approved monitoring plan. Explain substantial differences between the work proposed and the work that was performed in the field. Identify and explain any changes in proposed analysis strategy.

(6) Final report schedule. Indicate the proposed date when the final report will be submitted to the state agency if it differs from the schedule approved in the monitoring plan.

B. Final Report. The length of the discussion shall be appropriate to the complexity and scale of the project. State agencies may have additional report requirements. Include the following information listed below.

(1) Title page.

(2) Project description and background. Provide a brief description of the project, identifying project location, purpose of the monitoring, LA archaeological site record numbers for the monitored sites, state agency, project sponsor, list of project personnel, dates of fieldwork, and the state permit number.

(3) Field methods. Discuss methods implemented during the monitoring project. Identify and explain any substantial differences between the work proposed in the monitoring plan and the work performed in the field. Discuss the results of the monitoring.

(4) Site descriptions. Provide a brief description of each site monitored, any new sites discovered and results of monitoring.

(5) Analyses. Describe and discuss analyses performed on material remains recovered from each site and the condition of site at conclusion of monitoring. Information may be summarized in a table. Include a scaled site map with site boundaries, property ownership boundaries, site datum and location of all areas investigated.

(6) Summary and recommendations. Evaluate the effectiveness of the monitoring program and make recommendations regarding future work, protection measures or other management needs.

(7) References cited.

(8) Appendices. At a minimum, provide:

(a) a list of collected artifacts and specimens;

(b) reports from laboratories and consultants;

(c) a map of site locations. Mark as confidential all pages that discuss or depict exact locations of archaeological sites pursuant to Section 18-6-11.1 NMSA 1978.

(9) Attachments.

(a) Submit updated LA archaeological site records for each site consistent with the standards in 4.10.15 NMAC. A site plan map and a reproduction of a 7.5-minute USGS map showing the site location(s) shall be attached to each LA site form. Include any other site-specific records generated, such as artifact analysis forms. If coded analysis forms are attached, place a copy of the code key with every site form.

(b) Oversize maps and plans. Attach oversize (greater than 11x17 inches) maps and plans of individual sites to the report, not to the LA site record. Oversize project maps should be attached as appendices and not attached to the body of the report.

(c) Other location materials.

Attach engineering plan maps, aerial photographs and other non-standards source graphics to the report.

(10) Photographic materials.

Do not append photographs to site forms or report. All archivally packaged photographic materials and photographic logs shall be submitted to the approved curatorial facility consistent with the standards for that repository pursuant to 4.10.8.19 NMAC.

C. Report review. The report shall be reviewed in conformance with 4.10.8.18 NMAC. If collections were made during monitoring, the permittee shall curate the collections in accordance with the procedures outlined in 4.10.8.18 NMAC.

[4.10.17.12 NMAC - N, 1/01/06]

4.10.17.13 POPULAR REPORTS.

A popular report is not required under this rule, but the permittee should consider writing a short popular summary suitable for distribution in a newspaper, newsletter or magazine. The purpose of the report is to provide information to the interested general public about the state's heritage and contributions from on-going research and studies on state land. The public disclosure of the location of archaeological sites on state and private lands is prohibited by Section 18-6-11.1 NMSA 1978. The public disclosure of the location of archaeological sites on federal lands is prohibited by 36 CFR 296.18. The report may be brief, approximately 250 to 500 words in length. Longer articles or other types of public education and outreach approaches may be used if proposed in the monitoring plan. Include photographs or graphs as appropriate. The popular report shall be submitted to the state agency with the final monitoring report.

[4.10.17.13 NMAC - N, 1/01/06]

4.10.17.14 UNANTICIPATED DISCOVERIES.

In the event the permittee encounters discoveries not anticipated by the monitoring plan, all construction in the vicinity of the discovery shall cease, the discovery protected and a buffer of at least 50 feet established around the discovery. The permittee shall notify the state agency and HPD within 24 hours of the discovery. The permittee, state agency and HPD shall discuss appropriate procedures to respond to the discovery within two working days. The permittee shall implement the agreed upon procedures.

[4.10.17.14 NMAC - N, 1/01/06]

4.10.17.15 DEVIATIONS: The CPRC, SHPO and state archaeologist reserve the right to waive or deviate from this rule or any parts of this rule under circumstances deemed necessary by the

CPRC, SHPO and state archaeologist. Any waiver or deviance from this rule shall occur while maintaining the spirit, intent and objective of this rule and the Cultural Properties Act.

[4.10.17.15 NMAC - N, 1/01/06]

HISTORY OF 4.10.17 NMAC:
[RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

20.7.3 NMAC named "Liquid Waste Disposal" (filed 1-9-2004) is repealed and replaced with 20.7.3 NMAC named "Liquid Waste Disposal and Treatment". The repeal and replace will become effective 9/1/2005.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 7 WASTE WATER AND WATER SUPPLY FACILITIES PART 3 LIQUID WASTE DISPOSAL AND TREATMENT

20.7.3.1 ISSUING AGENCY:
New Mexico Environmental Improvement Board.

[20.7.3.1 NMAC - Rp, 20.7.3.1 NMAC, 9/1/05]

20.7.3.2 SCOPE:

A. This part, 20.7.3 NMAC, applies to on-site liquid waste systems, and effluent from such systems, that are designed to receive and do receive two thousand (2,000) gallons or less of liquid waste per day, and that do not generate discharges that require a discharge plan pursuant to 20.6.2 NMAC or a national pollutant discharge elimination system (NPDES) permit.

B. 20.7.3.306 and 809 NMAC apply to the disposal of on-site septicage and holding tank wastes.

[20.7.3.2 NMAC - Rp, 20.7.3.2 NMAC, 9/1/05]

20.7.3.3 STATUTORY AUTHORITY: NMSA 1978, Sections 74-1-6, 74-1-7(A)(3), 74-1-8(A)(3), and 74-1-9(Repl. Pamp 1993 and Cum. Supp. 1997).
[20.7.3.3 NMAC - Rp, 20.7.3.3 NMAC, 9/1/05]

20.7.3.4 DURATION:
Permanent.

[20.7.3.4 NMAC - Rp, 20.7.3.4 NMAC, 9/1/05]

20.7.3.5 EFFECTIVE DATE:

September 1, 2005, except where a later effective date is indicated in the history note at the end of a section.

[20.7.3.5 NMAC - Rp, 20.7.3.5 NMAC, 9/1/05]

20.7.3.6 OBJECTIVE: To protect the health and welfare of present and future citizens of New Mexico by providing for the prevention and abatement of public health hazards and surface and ground water contamination from on-site liquid waste disposal practices.

[20.7.3.6 NMAC - Rp, 20.7.3.6 NMAC, 9/1/05]

20.7.3.7 DEFINITIONS: As used in 20.7.3 NMAC.

A. Terms starting with the letter 'A' are defined as follows:

(1) "absorption area" means the area in square feet of infiltrative surface in a soil disposal system designated to receive effluent from a treatment unit;

(2) "advanced treatment" means any process of wastewater treatment that removes a greater amount of contaminants than is accomplished through primary treatment; advanced treatment may include physical or chemical processes;

(3) "aggregate" means clean washed gravel (no greater than 4% fines by weight), clean crushed rock, proprietary or other media reviewed by the technical advisory committee and approved by the department; "aggregate" shall have a minimum size of 3/4 inch and a maximum size of 2 1/2 inches and provide no less than 35% void space under field conditions; the aggregate shall be durable, inert, and shall have a hardness value of 3 or more on the Mohs scale of hardness so it will maintain its integrity, not collapse or disintegrate with time, and not be detrimental to the performance of the system;

(4) "alternative disposal" means any approved on-site liquid waste disposal method used in lieu of, including modifications to, a conventional disposal method; these include but are not limited to, mounds, evapotranspiration beds, pressure dosed systems, and surface irrigation systems;

(5) "amendment of permit" means a change that does not affect the permissibility of a liquid waste system, including a change of ownership, and is not a "modification" as defined in this section;

(6) "approved" means materials, products or procedures that have been reviewed by the technical advisory committee, if required, and accepted for use by the department; and

(7) "arroyo" means a dry wash or draw that flows occasionally, a watercourse (as a creek or stream) in an arid region or a water carved gully or channel.

B. Terms starting with the

letter 'B' are defined as follows:

(1) "bedrock" means the more or less solid, undisturbed rock in place either at the surface or beneath surficial deposits of gravel, sand or soil, or a consolidated rock formation of impervious material that may exhibit jointed, fractured or deteriorated characteristics, or the R horizon of a soil profile as defined in the USDA soil survey manuals;

(2) "bedroom" means any room or unfinished area within a building that is designated or might reasonably be used as a sleeping room pursuant to the responsible building permitting authority or manufactured housing authority;

(3) "biochemical oxygen demand" or "BOD" means the rate at which organisms use the oxygen in water or wastewater while stabilizing decomposable organic matter under aerobic conditions;

(4) "blackwater" means waste from a liquid flushing toilet, urinal, kitchen sinks, dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers;

(5) "body of water" means all constrained water including water situated wholly or partly within or bordering upon New Mexico, whether surface or subsurface, public or private;

(6) "building drain" means that part of the lowest piping of a drainage system that receives the collective liquid waste discharge from soil, waste and other drainage piping inside a building and conveys it to the building sewer that begins two (2.0) feet outside the vertical plane of the building wall, residential or commercial unit; and

(7) "building sewer" means that part of the horizontal piping of a drainage system that extends from the end of the building drain located two (2.0) feet outside the building wall and that receives the liquid waste discharge from the building drain and conveys it to a liquid waste treatment unit or approved point of disposal.

C. Terms starting with the letter 'C' are defined as follows:

(1) "canal" means a man-made ditch or channel that carries water for purposes other than domestic consumption;

(2) "cesspool" means an excavation or non-water tight unit that receives untreated water-carried liquid waste allowing direct discharge to the soil;

(3) "clay" means:

(a) a soil separate consisting of particles less than 0.002 millimeters in diameter; or

(b) the textural class name of any soil that contains 40% or more clay, less than 45% sand and less than 30% silt;

(4) "clearance" means the vertical thickness of suitable soil between the lowest point of a liquid waste disposal system and

the seasonal high ground water table, bedrock or other limiting layer;

(5) "cluster system" means a wastewater system that serves more than one unit and treats 2000 gallons per day or less of wastewater;

(6) "coarse sand" means soil comprised of 25% or more of soil particles 0.5 to 2.0 mm in diameter and less than 50% of any other grade of sand;

(7) "commercial liquid waste" means wastewater, whether treated or untreated, that exceeds 300 mg/l BOD, 300 mg/l TSS, 80 mg/l total nitrogen or 105 mg/l fats, oils and grease;

(8) "commercial unit" means a structure that is not a residential unit but which has sewage producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and clothes-washers or floor drains for receiving liquid waste including but not limited to uses included in Table 201.1;

(9) "conventional disposal" means a subsurface soil absorption system with gravity distribution of the effluent, with or without a lift station, constructed in accordance with the standards set forth in this regulation, including trench or bed absorption areas and seepage pits;

(10) "conventional treatment" means a septic tank where primary treatment occurs; and

(11) "conventional treatment system" means an on-site liquid waste system utilizing both conventional treatment and conventional disposal; for fee purposes only, "conventional treatment system" includes privies, holding tanks and vaults.

D. Terms starting with the letter 'D' are defined as follows:

(1) "degrade a body of water" means to reduce the physical, chemical or biological qualities of a body of water and includes, but is not limited to, the release of material that could result in the exceeding of standards established by 20.6.4 NMAC, Standards for Interstate and Intrastate Surface Waters, by 20.6.2 NMAC, Ground and Surface Water Protection and by 20.7.10 NMAC, Drinking Water;

(2) "department" means the New Mexico environment department;

(3) "design flow" means the flow rate for which an on-site liquid waste system must be designed in order to assure acceptable system performance, assuming the use of conventional plumbing fixtures;

(4) "disinfected" or "disinfection" means the use of any process designed to effectively kill most micro-organisms contained in liquid waste effluent including essentially all pathogenic (disease causing) organisms, as indicated by the reduction of the fecal coliform concentration to a specific level; these processes include, but are not limited to, suitable oxidizing agents such as

chlorine, ozone and ultraviolet light;

(5) "disposal system" means a generally recognized system for disposing of the discharge from a liquid waste treatment unit and includes, but is not limited to, seepage pits, drainfields, evapotranspiration systems, sand mounds and irrigation systems;

(6) "domestic liquid waste" means wastewater that does not exceed 300 mg/l BOD, 300 mg/l TSS, 80 mg/l total nitrogen or 105 mg/l fats, oils and grease; and

(7) "drainage ditch" means an unlined trench dug for the purpose of draining water from the land or for transporting water for use on the land.

E. Terms starting with the letter 'E' are defined as follows:

(1) "edge of a watercourse, canal or arroyo" means that point of maximum curvature at the upper edge of a definite bank or, if no definite bank exists, the highest point where signs of seasonal high water flow exist;

(2) "effluent" means the discharge from the final treatment unit;

(3) "effluent disposal well" means a prohibited method of disposal consisting of a drilled, driven or bored shaft or dug hole with depth greater than any surface dimension, used for subsurface emplacement of liquid waste, including, but not limited to, abandoned water supply wells, irrigation wells and test holes, but excluding seepage pits used as disposal systems, which conform to the standards in 20.7.3.702 NMAC;

(4) "enclosed system" means a watertight on-site liquid waste system that does not discharge to the soil, including, but not limited to, holding tanks and lined evapotranspiration systems;

(5) "established on-site liquid waste system" means an on-site liquid waste system that has been in active use at any time during the ten (10) years prior to submission of a permit application and in compliance with any liquid waste disposal regulation in effect at the time of installation, excluding the permitting or registration process, but does not include cesspools;

(6) "evapotranspiration system" means a disposal system designed to dispose of effluent through evaporation and plant uptake and transpiration; and

(7) "experimental system" also referred to as "innovative technology" means, without limitation, any on-site liquid waste system utilizing a method of liquid waste treatment technology, processes, equipment or components that are not fully proven in the circumstances of their intended use, but, based upon documented research and demonstration, appear to offer benefits which outweigh the potential risks

of failure, or a method of disposal that is not currently approved by the department; experimental systems shall be submitted for review to the wastewater technical advisory committee (WTAC) who shall recommend the system for full approval, recommend approval with conditions or reject the proposed system; final approval of experimental systems shall be at the discretion of the secretary.

F. Terms starting with the letter 'F' are defined as follows:

(1) "failed system" means, without limitation, an on-site liquid waste system that does not operate as permitted, that does not provide a level of treatment at least as effective as that provided by on-site liquid waste systems that meet the requirements of 20.7.3 NMAC or that poses a hazard to public health or degrades a body of water; and

(2) "fixture units" means a quantity of flow as defined in the UPC upon which plumbing systems are sized.

G. Terms starting with the letter 'G' are defined as follows:

(1) "gravels" means, for purposes of soils classification, a soil separate consisting of particles greater than 2 mm in diameter;

(2) "graywater" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing machines and laundry tubs, but does not include wastewater from kitchen sinks, dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers; and

(3) "ground water" means interstitial water that occurs in saturated earth material and is capable of entering a well in sufficient amounts to be utilized as a water supply.

H. Terms starting with the letter 'H' are defined as follows:

(1) "hazard to public health" means the indicated presence in water or soil of biological, chemical or other contaminants under such conditions that could adversely impact human health, including surfacing liquid waste, degradation to a body of water used as, or has the potential to be used as, a domestic water supply source, presence of an open cesspool or tank or exposure of liquid waste or septage in a manner that allows transmission of disease;

(2) "holding tank" means a non-discharging watertight tank designed to receive and retain liquid waste for periodic pumping and disposal off-site;

(3) "homeowner" means a person or persons who owns and occupies, or plans to occupy, a single family home; and

(4) "household hazardous waste" means a wide range of household products

that have the characteristics of hazardous waste when discarded, including but not limited to, pesticides and herbicides, oil-based paints and stains, automobile fluids (antifreeze, motor oil, transmission, steering and brake fluids, gasoline), pool chemicals, hobby chemicals and darkroom chemicals.

I. Terms starting with the letter 'I' are defined as follows:

(1) "imminent hazard to public health or safety" means any situation with the potential to immediately and adversely impact or threaten public health or safety;

(2) "impervious formation" means any soil or rock formation with a hydraulic conductivity of 10^{-7} cm/sec or less;

(3) "industrial process wastewater" means non-household wastewater, excepting the following: human excreta; used water from showers, washbasins and dishwashers; and food preparation waste; any wastewater generated in a commercial activity that contains the materials prohibited by Subsection A of 20.7.3.304 NMAC is industrial process wastewater;

(4) "inspector" means a person certified by the department to be competent in the physical examination and evaluation of on-site liquid waste systems;

(5) "interstitial water" means water in spaces between solid earth particles; and

(6) "invert" means the lowest portion of the internal cross section of a pipe or fitting.

J. Terms starting with the letter 'J' are defined as follows: [RESERVED]

K. Terms starting with the letter 'K' are defined as follows: [RESERVED]

L. Terms starting with the letter 'L' are defined as follows:

(1) "lateral" means a secondary water or wastewater pipeline branching directly from a central supply pipeline or manifold leading to an irrigation site;

(2) "limiting layer" means an impervious formation, a type Ia or type IV soil described in Table 703.1, bedrock or the seasonal high ground water table;

(3) "liner" means a manufactured or naturally occurring substance that restricts seepage to no more than 10^{-7} cm/sec. over the design service life of the lined unit; manufactured liners must have a minimum single-ply thickness of 20 mils and have no leaks;

(4) "liquid capacity" means the volume of liquid that is contained in a septic tank or treatment unit measured from the invert of the outlet; "liquid capacity" shall be calculated by multiplying the inside length by the inside width by the depth measured from the invert of the outlet to the unit's floor and converting the resulting sum

to gallons;

(5) "liquid waste" means the discharge of wastewater from any residential or commercial unit where the total wastewater discharge on a lot is 2000 gallons per day or less; liquid waste includes without limitation human excreta and water carried waste from plumbing fixtures, including, but not limited to, wastes from toilets, sinks, showers, baths, clothes- and dish-washing machines and floor drains; liquid waste also includes non-water carried wastes discharged into holding tanks, privies and vaults; specifically excluded from the definition of liquid waste are industrial process wastewaters, roof drainage, mine or mill tailings or wastes;

(6) "liquid waste system" means all liquid waste treatment units and associated disposal systems, or parts thereof, serving a residential or commercial unit on a lot; liquid waste systems include enclosed systems, holding tanks, vaults and privies but do not include systems or facilities designed to receive or treat mine or mill tailings or wastes;

(7) "liquid waste treatment unit" means a component of the on-site liquid waste system where removal, reduction or alteration of the objectionable contaminants of wastewater is designed to occur; it may include a holding component but does not include soil;

(8) "load" or "loading" means:

(a) in the context of the biological or chemical load received by an on-site liquid waste system, the amount of material applied to an on-site system liquid waste component per unit area or unit volume;

(b) in the context of the structural load applied to an on-site liquid waste structural component, the structural force applied to a liquid waste system component per surface area; and

(9) "lot" means a unified parcel excluding roadways and roadway easements, legally recorded or validated by other means; "lot" includes any contiguous parcel subject to a legally recorded perpetual easement that dedicates the servient parcel for the disposal of liquid waste generated on the dominant parcel.

M. Terms starting with the letter 'M' are defined as follows:

(1) "maintenance contract" means a contract between the system owner and a maintenance service provider in which the maintenance service provider agrees to provide periodic inspections in regards to the operation, maintenance and repair of the system;

(2) "maintenance service provider" means a public entity, company or individual in the business of maintaining liquid waste systems according to manufacturers' specification;

(3) "manifold" means a part of a

water distribution system normally located between the laterals and central supply line; the manifold splits the flow into a number of flows, either for distribution or for application to the land;

(4) "may" means discretionary, permissive or allowed; and

(5) "modify" or "modification" of a liquid waste system means:

(a) to change the method of on-site liquid waste treatment or disposal;

(b) to increase the design flow or change the design of the on-site liquid waste system;

(c) to change the horizontal or vertical location of the disposal system;

(d) to increase the amount of design flow or load received by the on-site liquid waste system above the original design flow or load; or

(e) replace the treatment unit or disposal system.

N. Terms starting with the letter 'N' are defined as follows: [RESERVED]

O. Terms starting with the letter 'O' are defined as follows:

(1) "off-site water" means the domestic water supply for the lot is from:

(a) a private water supply source that is neither within the lot nor outside the lot within one hundred (100) feet of the property line of the lot; or

(b) a public water supply source that is not within the lot;

(2) "on-site" means located on or within a lot;

(3) "on-site liquid waste system" means a liquid waste system located on the lot where the liquid waste is generated;

(4) "on-site water" means the domestic water supply for the lot is from:

(a) a private water supply source that is within the lot or within one hundred (100) feet of the property line of the lot; or

(b) a public water supply source that is within the boundaries of the lot; and

(5) "owner" means any person who owns an on-site liquid waste system or any component thereof, or any lot upon which any on-site liquid waste system or any component thereof is located.

P. Terms starting with the letter 'P' are defined as follows:

(1) "percolation rate" means the rate of entry of water into soil as determined by a standard soil percolation test at the depth and location of the proposed soil disposal system;

(2) "permanently displayed" means, in context of septic tank legends, embossed into the tank surface or a mechanically attached, non-corrosive plate;

(3) "permit" means a written approval from the department to install, modify, or operate an on-site liquid waste system;

(4) "permittee" means any owner of a permitted on-site liquid waste system;

(5) "person" means any individual, partnership, firm, public or private corporation, association, trust, estate, the state or any political subdivision or agency or any other legal entity or their legal representative, agents or assigns;

(6) "primary treatment" means a liquid waste treatment process that takes place in a treatment unit and allows those substances in wastewater that readily settle or float to be separated from the water being treated;

(7) "private water supply source" means a water supply source such as a well, spring, infiltration gallery or surface water withdrawal point used to provide water to a water supply system, if such system does not have a least fifteen (15) service connections and does not serve an average of twenty-five (25) individuals at least sixty (60) days out of the year;

(8) "privy" or "outhouse" means a receptacle for non-liquid-carried human excreta allowing direct discharge to the soil;

(9) "professional engineer" or "P.E." means a professional engineer licensed under the New Mexico Engineering and Survey Practice Act; "professional engineer" includes engineers licensed in any state of the United States for engineering related to a product design and manufacture of propriety products;

(10) "proprietary system" means a system patented, trademarked or otherwise the intellectual property of manufacturers not in the public domain; and

(11) "public water supply source" means a water supply source such as a well, spring, infiltration gallery or surface water intake structure used to provide water to a public water supply system for human consumption if the system served has at least fifteen (15) service connections or regularly services an average of twenty-five (25) individuals at least sixty (60) days out of the year.

Q. Terms starting with the letter 'Q' are defined as follows: [RESERVED]

R. Terms starting with the letter 'R' are defined as follows:

(1) "repair" means servicing or replacing, with like kind, mechanical or electrical parts of an approved liquid waste system, pumping of septage or making minor structural corrections to a tank or distribution box;

(2) "residential unit" means a structure that is primarily used for living quarters but does not include facilities listed in Table 201.1;

(3) "replacement area" means an unobstructed area within a lot designated to allow future construction of a replacement

disposal area as required by Subsection H of 20.7.3.201 NMAC;

(4) "retention/detention area" means an area on a parcel of property specifically designated and designed to capture and hold water resulting from the runoff of precipitation; and

(5) "roadway" means the surface area of land dedicated by easement or use to provide vehicular passage serving more than one lot or more than five residential or commercial units on a single property.

S. Terms starting with the letter 'S' are defined as follows:

(1) "sand" means:

(a) a soil separate consisting of individual rock or mineral fragments that range in diameter from 0.05 to 2.0 millimeters; or

(b) the textural class name of any soil that contains 85% or more sand and not more than 10% clay;

(2) "seasonal high ground water table" means the highest level to which the upper surface of ground water may be expected to rise within twenty-four (24) consecutive months;

(3) "seasonal high water flow" means the highest level that perennial or intermittent surface waters may be expected to rise as a result of a 25 year, 6 hour storm event;

(4) "secondary treatment" means a wastewater treatment process used to convert dissolved or suspended materials into a form more readily separated from the water being treated; the process is commonly a biological treatment process followed by settling and clarification resulting in a reduction of the 5-day biochemical oxygen demand (BOD5) and total suspended solids (TSS) concentrations to a level specified in 20.7.3.602 NMAC;

(5) "secretary" means the secretary of environment or a designated representative;

(6) "seepage pit" means a type of absorption system that uses a vertical, cylindrical, underground receptacle so constructed as to allow the disposal of effluent by soil absorption through its walls;

(7) "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank;

(8) "septic tank" means a liquid waste treatment unit designed to provide primary treatment and anaerobic treatment prior to disposal;

(9) "setback distance" means the distance measured by a straight horizontal line between the on-site liquid waste system, its designated replacement area, or portion thereof, and the object being considered;

(10) "shall" means mandatory;

(11) "silt" means:

(a) a soil separate consisting of particles between 0.05 and 0.002 millimeters in diameter; or

(b) the textural class name of any soil that contains 80% or more silt and less than 12% clay;

(12) "soil" means sediment or other unconsolidated accumulations of mineral particles that may or may not contain organic material and that have filtering properties;

(13) "suitable soil" means a soil, whether naturally occurring or introduced, that will treat the primary effluent effectively and act as an effective filter and remove organisms and suspended solids prior to the effluent reaching ground water, bedrock or a limiting layer, and that will provide adequate transmission to prevent a failed system. Suitable soils are classified as type Ib, II, or III soils as classified in Table 703.1; and

(14) "surface application" means the application of disinfected effluent to the ground surface where access is restricted by artificial or natural conditions.

T. Terms starting with the letter 'T' are defined as follows:

(1) "technical advisory committee" or "TAC" means the wastewater technical advisory committee created by NMSA 1978 Section 9-7A-15;

(2) "tertiary treatment" means additional treatment beyond secondary treatment standards, specifically, the reduction in the total nitrogen concentration;

(3) "test hole" means a hole dug in the proposed disposal field area a minimum of seven (7) feet deep or four (4) feet below the bottom of disposal field, whichever is greater, and a minimum of two (2) feet wide; the test hole shall be sufficient to examine the soil visually for type, structure, mottling, impervious layers and other soil characteristics, and to determine the seasonal high water table level; a soil boring may be used to determine the soil characteristics and soil depth;

(4) "total design flow" means the sum of design flows for all on-site liquid waste systems and other wastewater discharges on a lot;

(5) "total nitrogen" or "TN" means the combined organic nitrogen, ammonia, nitrite and nitrate contained in the wastewater or effluent; and

(6) "total suspended solids" or "TSS" means the measurable component of solid matter suspended in water or wastewater.

U. Terms starting with the letter 'U' are defined as follows:

(1) "uniform plumbing code" or "UPC" means the 1997 uniform plumbing code, 14.11.3 NMAC and the 1997 state of

New Mexico plumbing code and mechanical code, 14.9.2 NMAC, or the successor versions of each as adopted by the construction industries division of the New Mexico regulation and licensing department and promulgated in the New Mexico administrative code or another applicable code as adopted by the authority having jurisdiction; and

(2) [RESERVED]

V. Terms starting with the letter 'V' are defined as follows:

(1) "vault" means a non-discharging, watertight tank designed to receive and retain non-liquid carried human excreta for periodic pumping and disposal off-site; and

(2) "variance" means an administrative procedure authorizing the issuance of a permit or use of a system that does not meet the specific requirements of 20.7.3 NMAC but which meet the intent of 20.7.3 NMAC.

W. Terms starting with the letter 'W' are defined as follows:

(1) "wastewater" means blackwater and graywater;

(2) "watercourse" means any perennial, intermittent or ephemeral surface water conveyance channel including but not limited to a river, creek, arroyo, draw, canal or wash, or any other channel having definite banks and beds with visible evidence of the flow of water;

(3) "water(s) of the state" means all interstate and intrastate waters including natural ponds and lakes, playa lakes, reservoirs, perennial streams and their tributaries, intermittent streams, sloughs, prairie potholes and wetlands;

(4) "watertight" means not allowing water to pass in or out or as otherwise determined in 20.7.3 NMAC; and

(5) "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; constructed wetlands are not included in this definition.

X. Terms starting with the letter 'X' are defined as follows: [RESERVED]

Y. Terms starting with the letter 'Y' are defined as follows: [RESERVED]

Z. Terms starting with the letter 'Z' are defined as follows: [RESERVED]

[20.7.3.7 NMAC - Rp, 20.7.3.7 NMAC, 9/1/05]

20.7.3.8 GENERAL PROVISIONS:

A. Interpretation: The definitions in 20.7.3.7 NMAC shall be con-

strued so as to achieve the objective of 20.7.3 NMAC.

B. Alternative Resources: When guidance is sought in areas not covered by 20.7.3 NMAC, the most recent version of the following resources may provide guidance. In cases where reference to these alternative resources is proposed the department shall make the final determination of applicability.

(1) The American national standards institute (ANSI) book of codes.

(2) The American society for testing and materials (ASTM) testing manual.

(3) The international association of plumbing and mechanical officials (IAPMO) codes.

(4) The National sanitation foundation (NSF) standard 40, standard 41, and standard 46.

(5) EPA design manuals for onsite wastewater treatment and disposal systems.

(6) USDA soil survey manuals.

(7) New Mexico administrative code.

(8) Wisconsin mound soil absorption system: siting, design and construction manual, university of Wisconsin-Madison.

C. The department field offices shall make educational materials regarding on-site liquid waste systems available to the public and to permit applicants. Information on proper maintenance of systems shall be given to new permittees. Educational materials shall be in both English and Spanish.

[20.7.3.8 NMAC - Rp, 20.7.3.8 NMAC, 9/1/05]

20.7.3.9 through 20.7.3.200 [RESERVED]

20.7.3.201 PROCEDURES; GENERAL REQUIREMENTS:

A. Every owner shall be responsible for the storing, treating and disposing of liquid waste generated on that property.

B. No person shall discharge untreated liquid waste except into a permitted enclosed system, a permitted liquid waste treatment unit or a public sewer system, except for the discharge of graywater pursuant to 20.7.3.810 NMAC. No person shall discharge liquid waste or effluent into a cesspool or effluent disposal well.

C. No person shall discharge effluent from a liquid waste treatment unit except through a permitted liquid waste disposal system or to a permitted sewer system. No person shall discharge effluent from a liquid waste treatment unit to an effluent disposal well.

D. No person shall install, have installed, modify or have modified, own, operate or use an on-site liquid waste system that, by itself or in combination with

other on-site liquid waste systems, may cause a hazard to public health or degrade any body of water.

E. All residential and commercial units utilizing an on-site liquid waste system shall connect to a public sewer if required by the local authority having jurisdiction.

F. The type of on-site liquid waste system shall be determined on the basis of location, lot size, soil and site characteristics. The system, except as otherwise approved, shall consist of a liquid waste treatment unit and associated disposal system.

G. An on-site liquid waste system shall be located wholly on the same lot, which is the site of the source or sources served by the on-site liquid waste system.

H. All disposal systems that utilize subsurface discharge and soil absorption shall be designed with an unobstructed replacement area so that additional seepage pits, drainfields or other subsurface absorption areas equivalent to at least 100% of the required original disposal system may be installed if the original system cannot dispose of all the liquid waste. No division of a lot or construction or remodeling of a permanent structure on the lot shall be made if such division, construction or remodeling impairs the usefulness of the 100% replacement area.

I. A privy may be used for the disposal of human excreta and toilet paper, but not for the disposal of other liquid wastes.

J. On-site liquid waste systems, other than holding tanks, receiving waste from recreational vehicles (RVs) shall provide pretreatment of the waste to the level of domestic waste as defined in Paragraph (6), Subsection D of 20.7.3.7 NMAC. Existing permitted on-site liquid waste systems receiving waste from recreational vehicles shall continue to be authorized to operate. Upon modification of these existing systems, the system shall be required to provide pretreatment of the waste.

K. On-site liquid waste systems permitted, but not installed, prior to the effective date of 20.7.3 NMAC shall be installed in accordance with the regulations in effect at the time of the permit issuance, provided that the installation of the system shall be completed within one (1) year of the effective date of 20.7.3 NMAC.

L. On-site liquid waste systems installed prior to the effective date of 20.7.3 NMAC shall meet the requirements of the regulations in effect at the time of their initial installation, or if there has been a permitted modification, the regulations in effect at the time of the most recent permitted modification will apply.

M. Nothing contained in

20.7.3 NMAC shall be construed to prevent the department from requiring compliance with more stringent requirements than those contained herein, where the department finds that such more stringent requirements are necessary to prevent a hazard to public health or the degradation of a body of water. The following parameters may be considered when determining if a body of water is potentially vulnerable to degradation from liquid waste effluents, and if more stringent requirements may be necessary to prevent such degradation:

- (1) a water-table aquifer (includes both unconfined and semi-confined conditions) with a vadose zone thickness of 100 feet or less containing no soil or rock formation that would act as a barrier to saturated or unsaturated wastewater flow;
- (2) sites within one quarter (1/4) mile of a known groundwater plume of anthropogenic anoxic or nitrate contamination caused by migration through undisturbed vadose zone, provided that the site overlies the same aquifer;
- (3) an aquifer overlain by fractured bedrock;
- (4) an aquifer in karst terrain; and
- (5) a gaining stream impacted by nutrients from liquid waste systems.

N. Upon written request, the department shall provide a letter of determination stating whether or not more stringent requirements may be imposed on a lot or parcel of land. This determination shall be valid for one year. The department shall issue the determination letter within 10 working days.

O. The secretary, or a designated representative, upon presentation of proper credentials and with consent or with an administrative search warrant:

(1) shall have the right of entry to any property on which a permitted or unpermitted on-site liquid waste system regulated by 20.7.3 NMAC exists or is required for the limited purpose of inspecting the liquid waste system or to determine compliance with these regulations or permit conditions; failure to provide reasonable access for the purpose of inspecting a liquid waste system or to determine compliance with these regulations or permit conditions shall be cause for revocation or suspension of a permit;

(2) shall have access to and may copy any record required to be established and maintained by these regulations or permit conditions; failure to provide reasonable access to or copies of any record required to be established and maintained by these regulations or permit conditions shall be cause for revocation or suspension of a permit; and

(3) may obtain any samples required to determine compliance with 20.7.3 NMAC or permit conditions; failure to provide reasonable access to facilities for the purpose of obtaining samples shall be cause for revocation or suspension of a permit.

P. Design flows shall be calculated as follows:

(1) for residential sources, the design flow shall be calculated assuming two (2) persons per bedroom for the first two (2) bedrooms and one (1) person per additional bedroom in a single family dwelling unit and seventy-five (75) gallons per person per day; multiple family dwelling unit source design flows shall be calculated as the sum of design flows for each single family unit included; and

(2) design flows for nonresidential sources shall be based on Table 201.1 or generally accepted references (such as the uniform plumbing code or the USEPA design manual: *on-site wastewater treatment and disposal systems*); design flows for nonresidential sources also may be based on professional engineering design calculations; total design flows may be determined by the submittal of metered water use or effluent flow data and shall be multiplied by a safety factor of 1.5 for design flow calculations.

Table 201.1: Established liquid waste design flow rates

TYPE OF OCCUPANCY	GALLONS PER DAY
1. Airport, Bus Terminal, Train Station	20 per employee 5 per passenger
2. Beauty & Barber Shop	75 per service chair
3. Bowling alleys (snack bar only)	75 per lane
4. Bed and Breakfast	150 first bedroom 100 each additional bedroom
5. Camps: campground with central comfort station with flush toilets, no showers day camps (no meals served) summer and seasonal	35 per person 25 per person 15 per person 50 per person
6. Churches (Sanctuary) with kitchen waste	2 per seat 7 per seat
7. Dance hall	5 per person
8. Doctor and Dentist Office	250 per practitioner, 15 per employee
9. Factories: per 8 -hour shift no showers with showers cafeteria, add	25 per employee 35 per employee 5 per employee

10. Food Operations: Restaurants operating 16 hours or less per day Restaurants operating more than 16 hours per day Bar, cocktail lounge add per pool table or video game Carry out only, including caterers add per 8-hour shift Food outlets only add for deli add for bakery add for meat department add per public restroom	40 per seat 60 per seat 20 per seat 15 each 50 per 100 sq ft floor space 20 per employee 10 per 100 sq ft floor space 40 per 100 sq ft floor spa ce 40 per 100 sq ft floor space 75 per 100 sq ft floor space 200
11. Hotels, Motels, Lodges laundries, lounges and restaurants calculated separately	60 per bed
12. Institutions (resident) Nursing homes Rest homes	75 per person 125 per person 125 per person
13. Laundries self-service (minimum 10 hours/day) commercial	50 per wash cycle per manufacturer's specifications
14. Offices	20 per employee per 8 -hour shift
15. Parks: picnic park - toilets only	20 per parking space
16. Recreation Vehicles (RV) Park without water hookup with water and sewer hookup RV dump stations	75 per space 100 per space 50 per RV
17. Schools - staff and office Elementary and Day Care Intermediate and High Boarding, total waste gym and showers, add with cafeteria, add	20 per person 15 per student 20 per student 100 per person 5 per student 3 per student
18. Service stations and convenience stores uni-sex restrooms	400 per toilet 800 per Toilet
19. Stores public restrooms	20 per employee 10 per 100 sq ft. floor
20. Swimming and bathing places, including spas and hot tubs, public	10 per person
21. Theaters, auditoriums Drive-ins	5 per seat 10 per space
22. Veterinary Clinic add add	250 per practitioner 15 per employee 20 per kennel, stall, or cage

Liquid waste generated by the occupancies above, exceeding the definition of domestic liquid waste, shall require pretreatment prior to utilizing a conventional treatment system.

Q. The minimum liquid capacity of a septic tank shall be determined as follows:

- (1) for residential units, the liquid capacity shall be based on the number of bedrooms using Table 201.2; and
- (2) for commercial units, the liquid capacity shall be based on the number of plumbing fixture units using Table 201.2; or

(3) if based on estimated design flows pursuant to Paragraph (2) of Subsection P of 20.7.3.201 NMAC, the minimum liquid capacity shall be 2.5 times the design flow, whichever is greater.

Table 201.2: Capacity of Septic Tanks

Single family dwellings, number of bedrooms	Other uses maximum fixture units*	Minimum septic tank capacity in gallons served
1	10	750
2 - 3	12	1000
4	15	1200
5 - 6	20	1500
7 - 9	27	2000
	29	2250
	32	2500
	35	2750

* 100 fixture units or less are equal to 31.1 gallons per fixture unit.

R. Waste from a water softener unit shall comply with the following.

(1) Softener waste may be discharged to a conventional treatment unit.

(2) For new construction utilizing an advanced treatment unit, the softener waste shall not be discharged to the advanced treatment unit. The softener waste shall bypass the advanced treatment unit and discharge directly to the drainfield or be disposed of in some manner acceptable to the department.

(3) If a water softener unit is installed at an existing residential or commercial unit utilizing an advanced treatment unit:

(a) the current liquid waste permit shall be amended to reflect the installation;

(b) a written notice shall be submitted to the maintenance service provider of the advanced treatment unit; and

(c) either a demand-initiated regeneration control device (DIR device) shall be installed or the softener waste shall bypass the advanced treatment unit.

(4) If an advanced treatment unit is to be installed at an existing residential or commercial unit with an existing water softener, the installation shall be done in accordance with the permit.

[20.7.3.201 NMAC - Rp, 20.7.3 NMAC, 201, 301, 302, 401, 402, 9/1/05]

20.7.3.202 PROCEDURES; MODIFICATION OF EXISTING SYSTEMS:

A. Prior to the modification of an existing on-site liquid waste system, a permit application must be submitted in accordance with 20.7.3.401-405 NMAC. The modification shall be in accordance with 20.7.3 NMAC except as noted in Subsection C of 20.7.3.202 NMAC below.

B. Replacement components for on-site liquid waste systems shall be of materials approved the department.

C. On-site liquid waste systems modified after the effective date of this regulation:

(1) shall meet the lot size requirements of the regulations in effect at the time of the initial installation or most recent permitted modification; and

(2) the total lot flow shall be increased only if all current standards and requirements are met pursuant to 20.7.3 NMAC. More stringent requirements may be required pursuant to Subsection M of 20.7.3.201 NMAC.

D. The septic tank need not be replaced as part of the modification if the tank is structurally sound, constructed of approved materials, meet the requirements of 20.7.3.501-502 NMAC, and if the exist-

ing tank has a liquid capacity within one tank size of the capacity required by Subsection Q of 20.7.3.201 NMAC. In addition, the tank shall be pumped and the inlet and outlet baffles or sanitary tees checked and repaired or replaced, if needed. An approved effluent filter shall be installed in accordance with Subsection C of 20.7.3.502 NMAC.

E. The modification of unpermitted systems shall be preceded by an inspection. If the system is found to be installed in accordance with the regulations in effect at the time of the original installation or most recent modification, a permit may be issued in accordance with Subsection C of 20.7.3.202 NMAC and Subsection J of 20.7.3.401 NMAC. [20.7.3.202 NMAC - N, 9/1/05]

20.7.3.203 PROCEDURES; INSPECTIONS AND TESTING:

A. The department may perform site inspections prior to making a decision on a permit application or variance petition, during construction or modification of the system. The department may require test holes to be excavated and documentation to be provided for purposes of determining soil types, depth of soil and water table depths. The department may collect samples of soil, liquid waste and water, including water from wells, to determine compliance with 20.7.3 NMAC.

B. Upon granting the permit or variance application, if the department determines an inspection is necessary, the department shall indicate the point in the construction process where the first construction inspection is to be scheduled or in accordance with Subparagraph A of this section.

(1) The person doing the work authorized by the permit shall notify the department to schedule an inspection, orally or in writing, a minimum of 2 working days prior to the inspection. The department may assess a re-inspection fee if the work is not ready for inspection at the time of the scheduled inspection. In the event the inspection is not conducted within one hour after the appointed time of inspection, the contractor shall take photographs that accurately identify the site and features of the installation and proceed with the installation. Copies of such photographs shall be submitted to the department.

(2) If an inspection results in the issuance of a notice of non-approval, a re-inspection shall be required. The person shall notify the department as indicated above.

C. System components shall be properly identified as to manufacturer and shall meet all specifications spec-

ified in 20.7.3 NMAC.

D. The department may require testing to verify watertight construction and initial functioning of any liquid waste system.

(1) Liquid waste treatment units, pump stations or pump chambers shall be considered watertight by successfully completing one of the following testing procedures.

(a) Water pressure testing: Seal the unit, fill with water and let stand for 24 hours. Refill the unit. The unit is approved if the water level is held for 60 minutes.

(b) Vacuum testing: Seal the unit and apply a vacuum to 2 inches (50mm) of mercury. The unit is approved if the vacuum is held for 60 minutes.

(2) The department may require a flow test be performed through the system to the point of effluent disposal. All lines and components shall be watertight. Capacities, required air space, and fittings shall meet the requirements of 20.7.3 NMAC.

(3) The department may require operational testing of advanced treatment components to verify initial functioning.

[20.7.3.203 NMAC - Rp, 20.7.3 NMAC, 204, 408, 9/1/05]

20.7.3.204 through 20.7.3.300

[RESERVED]

20.7.3.301 STANDARDS; LOT SIZE REQUIREMENTS:

A. The requirements of this section apply to all conventional treatment systems that discharge to the soil. Compliance with the requirements of this section shall be based on the total design flow for the lot. Water conservation devices or demonstrated actual flows shall not be used to reduce the requirements of this section. For the purposes of 20.7.3 NMAC, lot sizes shall be calculated to the nearest hundredth (0.01) acre.

B. The date of record for a lot shall be considered to be either:

(1) the date of legal recording in the county clerk's office or validation by other means associated with the most recent change in lot size or boundaries; or

(2) for those lots in subdivisions having received final approval from governments having jurisdiction therein prior to February 1, 1990, such date of record shall be two and one-half (2 1/2) years from the date of final government approval or July 1, 1992, whichever occurs first.

C. A conventional treatment system shall not be installed on a lot sized smaller than 0.75 acre, where there is not an established on-site liquid waste system, except as otherwise provided in Subsection F of 20.7.3.301 NMAC. The

size of a lot shall be the total area of the lot less any area that is subject to a roadway, roadway easement and liquid waste disposal easements granted to another lot. The design flow for a conventional treatment system shall not exceed 500 gallons per day per acre. For total design flows that exceed the allowable flow or for lots that do not meet the minimum lot size, the total nitrogen discharged to the lot shall be reduced in accordance with Subsection B of 20.7.3.603 NMAC.

D. On-site liquid waste systems installed prior to the effective date of 20.7.3 NMAC shall meet the lot size requirements of the regulations in effect at the time of their initial installation or if there has been a permitted modification, the regulations in effect at the time of the most recent prior permitted modification.

E. Table 301.1 lists the minimum lot sizes required for typical flow rates for conventional treatment systems for lots with a date of record of February 1, 1990 or later.

Table 301.1

TOTAL DESIGN FLOW (gallons per day)	MINIMUM LOT SIZE (acres)
375 or less	0.75
450	0.90
600	1.20
750	1.50
1125	2.25
1500	3.00
1875	3.75
2000	4.00

F. On-site liquid waste systems installed after the effective date of these regulations, on lots with dates of record prior to February 1, 1990, without established on-site liquid waste systems, shall conform to the following:

(1) for lots less than 0.5 acre, no conventional systems shall be authorized;

(2) for lots 0.5 acre to 0.75 acre and 100 feet or less to groundwater or within a 200 foot radius of a public water supply well, no conventional systems shall be authorized;

(3) for lots 0.5 acre to 0.75 acre with a private well, not within a 200 foot radius of a public supply well and 101 feet to 600 feet to groundwater, the total design flow shall not exceed 450 gallons per day or the total design flow allowed in Subsection C of 20.7.3.301 NMAC, whichever is greater, for 3 years after the effective date of these regulations;

(4) for lots 0.5 acre to 0.75 acre on a public water system, not within a 200 foot radius of a public supply well and 101 feet to 600 feet to groundwater, the total design flow shall not exceed 450 gallons per day or the total design flow allowed in Subsection C of 20.7.3.301 NMAC, whichever is greater, for 5 years after the effective date of these regulations;

(5) for lots 0.5 acre or larger and greater than 600 feet to groundwater, 450 gallons per day or the total design flow allowed in Subsection C of 20.7.3.301 NMAC, whichever is greater is allowed; and

(6) once the extended time periods in Paragraphs (3) and (4) of this subsection have expired, then the lot size/flow limitation in Subsection C of 20.7.3.301. NMAC shall apply to new installations.

G. The following Table 301.2 summarizes the minimum lot size requirements, in acres, and permissible design flows in effect prior to February 1, 1990 and is for the purpose of determining the requirements existing at the time of initial installation or most recent permitted modification.

Table 301.2

		RECORD DATE								
		01/01/60 to 11/01/73	11/01/73 to 09/07/79*	09/07/79 to 03/01/80	03/01/80 to 11/09/85	11/09/85 to 02/01/90				
OFF-SITE WATER**	0.25***	Minimum Lot Size	Soil Group **	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size
		A	0.50	0-1000	0.50	0-375	0.33	0-375	0.33	
B	0.75	1000- 1500	1.00	376- 1000	0.50	376- 750	0.50			
C	1.00	1500- 2000	1.25	1000- 1500	1.00	750- 1125	1.00			
D	****			1501- 2000	1.25	1126- 1500	1.25			
						1501- 2000	1.75			

ON-SITE WATER**	0.50***	A	0.75	0-1000	0.75	0-1000	0.75	0-375	0.75
		B	1.00	1000-1500	1.25	1000-1500	1.25	376-750	1.50
		C	1.25	1500-2000	1.70	1501-2000	1.70	750-1125	2.00
		D	****					1126-1500	2.75
								1501-2000	3.50

(1) * The maximum total design flow was 1,000 gpd for the lot sizes shown.

(2) ** See Subsection H of 20.7.3.301 NMAC.

(3) *** These requirements applied to lots in subdivisions that were required at the time of subdivision to obtain state health department review and approval.

(4) **** No on-site liquid waste disposal to soil allowed.

(5) NOTE: Roadways were first excluded from figuring lot sizes as of 11/09/85.

H. The following Table 301.3 lists the soil types for lot size determinations for the period November 1, 1973 to September 7, 1979: The minimum lot size required for the location of an individual liquid waste disposal system is determined by the most limiting soil group under which any soil characteristic falls.

Table 301.3

SOIL CHARACTERISTICS	A Slight Limitations	B Slight Limitations	C Moderate Limitations	D Severe Limitations
1. SOIL DEPTH (depth to bedrock, in feet)	More than 6 and	More than 6 and	4 - 6 or	Less than 4 or
2. PERCOLATION RATE (rate of percolation of water into soil in minutes per inch)	0 - 15 and	16 - 30 and	31 - 60 or	More than 60 or
3. SEASONAL WATER TABLE (depth to shallowest water table during the year, in feet)	More than 12 and	More than 12 and	4 - 12 or	Less than 4 or
4. SLOPE (incline of the land surface, in percent)	0 - 8 and	0 - 8 and	8 - 25 or	More than 25 or
5. FLOODING POTENTIAL (overflow frequency, in years)	None	None	No more than 1 in 25	More than 1 in 25

[20.7.3.301 NMAC - Rp, 20.7.3.302 NMAC, 9/1/05]

20.7.3.302 STANDARDS; SETBACK REQUIREMENTS:

A. On-site liquid waste systems shall be located to meet setback distances, in feet, specified in the following Table 302.1. Setback distances apply to any part of the on-site liquid waste system and its designated replacement area.

Table 302.1: Minimum setback and clearance requirements

From:	To:	Building Sewer	Treatment Unit*	Disposal Field	Seepage Pit
Property lines		clear	5 ft.	5 ft.	8 ft.
Building or structure		2 ft.	5 ft.	8 ft.	8 ft.
Distribution box		--	--	5 ft.	5 ft.
Disposal field		--	10 ft.*****	4 ft*****	10 ft.
Seepage pit		--	5 ft.	5 ft.	12 ft.
Drinking water line*****:					
- private		1 ft.	10 ft.	10 ft.	10 ft.
- public		10 ft.	10 ft.	10 ft.	10 ft.
Drinking Water Source/Well:					
- Private		50 ft.	50 ft.	100 ft.	100 ft.
- Public		50 ft.	100 ft.	200 ft.	200 ft.
Irrigation well		50 ft.	50 ft.	100 ft.	100 ft.
Lined canals		--	10 ft.**	10 ft.**	10 ft.**
Unlined canals, drainage ditches		--	15 ft.**	25 ft.**	25 ft.**

Arroyos	--	15 ft.**	25 ft.**	25 ft.**
Other watercourses,				
Waters of the State	--	50 ft.	100 ft.	100 ft.
Retention/detention area	--	15 ft.	15 ft.	15 ft.
Seasonal high water table, bedrock and other impervious layers***	--	--	4 ft. to bottom of system	4 ft. to bottom of system

- (1) * Applies to privy pits, enclosed systems, other liquid waste treatment units.
- (2) ** Plus depth of channel.
- (3) *** Unlined privy pits shall provide clearance of at least 4 feet.
- (4) **** Plus 2 feet for each additional foot of depth in excess of 1 foot below perforated pipe.
- (5) ***** May be 5 feet when Schedule 40 PVC/DWV pipe is used.
- (6) *****Or applicable plumbing code.

B. Setback distances to watercourses, canals and arroyos shall be measured from the edge of the seasonal high water flow to the on-site liquid waste system component. Setback distances to artificially controlled lakes or reservoirs shall be measured from the closest projected shoreline at the maximum controlled water level.

[20.7.3.302 NMAC - Rp, 20.7.3.303 NMAC, 9/1/05]

20.7.3.303 STANDARDS; CLEARANCE REQUIREMENTS:

A. Seasonal high ground water levels and seasonal high water flows shall be determined by the department either by direct observation, by the presence of mottling in the soil profile, by reliance upon the findings of a qualified professional or upon published scientific material, well records or other sources acceptable to the department. The department may adjust the measured water table to compensate for factors such as season, drought, irrigation or flooding. Compliance with seasonal high ground water table and seasonal high water flow clearances in this section shall be based on the best-documented evidence available to the department at the time of installation or modification.

B. No conventional on-site liquid waste system shall discharge liquid waste into the soil where the vertical clearance from the bottom of the absorption area to seasonal high ground water table, impervious formation or other limiting layer is less than four (4) feet of suitable soil. A reduction in this clearance may be allowed with appropriate advanced treatment or alternative disposal.

C. Unlined privy pits shall provide a clearance of no less than four (4) feet of suitable soil from the bottom of the excavation to the seasonal high ground water table, the seasonal high water flow, impervious formation or other limiting layer.

[20.7.3.303 NMAC - Rp, 20.7.3.304 NMAC, 9/1/05]

20.7.3.304 STANDARDS; PROHIBITIONS:

A. No person shall introduce into an on-site liquid waste system household hazardous wastes, solvents, fertilizers, livestock wastes or other materials of a composition or concentration not generally considered liquid waste as defined in 20.7.3 NMAC.

B. Liquid waste treatment additives shall not be used as a means to reduce the frequency of proper maintenance and removal of septage from a treatment unit.

[20.7.3.304 NMAC - Rp, 20.7.3 NMAC, 308, 309, 9/1/05]

20.7.3.305 STANDARDS; WASTE INTERCEPTORS:

A. When liquid wastes are discharged containing excessive amounts of grease, garbage, flammable wastes, sand or other ingredients that may affect the operation of an onsite liquid waste system, an interceptor for such wastes shall be installed in-line prior to the liquid waste treatment unit.

B. Installation of such interceptors shall comply with the uniform plumbing code.

C. Interceptors shall be installed in locations that meet minimum setback and clearance requirements of Table 303.1.

D. Waste interceptors shall be maintained in accordance with manufacturer's specifications and require a maintenance contract to be in effect at all times.

[20.7.3.305 NMAC - Rp, 20.7.3.407 NMAC, 9/1/05]

20.7.3.306 STANDARDS; SEPTAGE: Disposal of septage shall not cause a hazard to public health nor degrade a body of water. Transport and disposal of septage shall be in conformance with applicable federal, state and local regulations.

[20.7.3.306 NMAC - Rp, 20.7.3.307 NMAC, 9/1/05]

20.7.3.307 STANDARDS; ABANDONED SEWERS AND ON-SITE LIQUID WASTE SYSTEMS:

A. Every abandoned building sewer, or part thereof, shall be plugged or capped within five (5) feet of the property line using a cap or plug prescribed by the uniform plumbing code.

B. Every cesspool, holding tank, septic tank, seepage pit or other liquid waste treatment unit that has been abandoned or has otherwise been discontinued from further use or to which no waste or building sewer from a plumbing fixture is connected shall have the liquid waste pumped there from and properly disposed. The bottom of the unit shall be opened or ruptured, or the entire unit collapsed so as to prevent the unit from retaining water. The unit shall be completely filled with earth, sand, gravel, concrete or other approved material.

C. The top cover or arch over the cesspool, holding tank, septic tank, seepage pit or other liquid waste treatment unit shall be removed or collapsed before filling and the filling shall not extend above the top of the vertical portions of the sidewalls or above the level of any outlet pipe until inspection or authorization by the department. After such inspection or authorization, the cesspool, holding tank, septic tank, seepage pit or other liquid waste treatment unit shall be filled to the level of the top of the ground.

D. Where on-site treatment systems are abandoned consequent to connecting any premises with a public sewer, the permittee making the connection shall fill all abandoned treatment units as required by the department within 30 days from the time of connection.

[20.7.3.307 NMAC - Rp, 20.7.3.410 NMAC, 9/1/05]

20.7.3.308 through 20.7.3.400
[RESERVED]

**20.7.3.401 PERMITTING ;
GENERAL REQUIREMENTS:**

A. No person shall install or have installed a new on-site liquid waste system or modify or have modified an existing on-site liquid waste system, unless that person obtains a permit issued by the department prior to construction of such installation or modification. Failure to obtain the required permit may result in the initiation of enforcement actions by the department.

B. No person shall construct or modify a residential or commercial unit on, or transport a residential or commercial unit onto, a lot for which an on-site liquid waste system is required unless the department has issued an on-site liquid waste system permit prior to such construction, modification or transportation.

C. No person shall construct, install or modify an on-site liquid waste system unless that person holds a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division, except that a homeowner may install or modify permitted septic tanks and conventional trench or bed disposal fields. Once the department has developed a certification program pursuant to 20.7.3.904 NMAC, the contractor shall comply with the certification requirements of that section prior to constructing, installing or modifying any on-site liquid waste system. Once the department has developed a homeowner certification program pursuant to 20.7.3.904 NMAC, a homeowner shall comply with the homeowner certification requirements prior to constructing, installing or modifying an on-site liquid waste system. A homeowner who self-installs a system shall not compensate any person to perform any phase of the system construction, unless that person holds a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division and has complied with the department's certification requirements. Obtaining a permit from the department for the installation or modification of an on-site liquid waste system does not relieve any person from the responsibility of obtaining any other

approval, license or permit required by state, city or county regulations or ordinances or other requirements of state or federal laws. All construction defined as "self installed" will be required to be inspected by the department.

D. A permit is not required for graywater discharges or for systems designed for the discharge of graywater that meet the requirements of 20.7.3.810 NMAC.

E. Any person seeking a permit shall do so by submitting an application to the field office of the department having jurisdiction for the area where the system is to be installed or modified. The application shall be:

(1) made on a form provided by the department;

(2) accompanied by the recorded deed or other recorded description and such other relevant information as the department may reasonably require to establish lot size, boundaries, date of record and ownership; and

(3) signed by the applicant or their authorized representative.

F. The department shall require complete and accurate information before a permit is issued for an on-site liquid waste system.

G. The department shall deny the application if the proposed system will not meet the requirements of 20.7.3 NMAC.

H. The department shall maintain a file of all permits issued and applications denied. The file shall be open for public inspection.

I. All systems shall be installed, operated and maintained in accordance with the permit and applicable regulations.

J. Unpermitted conventional systems installed prior to February 1, 2002 may be issued a certificate of registration for continued operation if:

(1) the treatment unit is pumped and inspected;

(2) the disposal system appears to be functioning properly; and

(3) the appropriate permit fee is paid for the system installed.

K. Unpermitted conventional systems installed on or after February 1, 2002 may be permitted if:

(1) the entire treatment and disposal system is fully exposed and inspected;

(2) the on-site liquid waste system is determined, upon inspection by the department, to meet all requirements of 20.7.3 NMAC; and

(3) the appropriate permit fee and an administrative penalty in accordance with Environmental Improvement Act, Chapter 74, Article 1 NMSA 1978, are paid.

[20.7.3.401 NMAC - Rp, 20.7.3.201 NMAC, 9/1/05]

**20.7.3.402 PERMITTING ;
CONVENTIONAL TREATMENT AND
DISPOSAL SYSTEMS:**

A. For liquid waste systems utilizing conventional treatment and conventional disposal, the department may require the following information to be included with the application.

(1) A detailed site plan, completely dimensioned, showing direction and approximate slope of surface; location of all present or proposed retaining walls; arroyos, canals, irrigation or drainage channels; water supply lines, wells or other water sources; other on-site liquid waste systems; paved areas, roadways and structures; location of the proposed liquid waste system and replacement area with relation to lot lines and structures; and to all sources of water supply located within two-hundred (200) feet.

(2) Sufficient details of construction, materials and components necessary to assure compliance with the requirements of 20.7.3 NMAC.

(3) A detailed log of soil formations and ground water level as determined by soil borings or a test hole(s) dug in close proximity to any proposed seepage pit or disposal field.

(4) A set of floor plans or verification of the total flow for the structure(s) served by the liquid waste system.

(5) Any additional information that may be necessary to demonstrate that the permit will not create a hazard to public health or degrade a body of water.

B. If the department finds that specific requirements in addition to or more stringent than those specifically provided in 20.7.3 NMAC are necessary to prevent a hazard to public health or the degradation of a body of water, the department shall issue permit conditions with more stringent requirements or additional specific requirements. Such additional or more stringent requirements may apply to system design, siting, construction, inspection, operation and monitoring.

C. The installation or modification of an on-site liquid waste system shall be in accordance with the permit and all regulatory requirements of 20.7.3 NMAC. Any change from the permitted installation or modification, including a change of contractor, must receive department approval prior to implementation. An amendment to the permit shall be submitted within 7 days of the completion of the installation.

D. No person shall operate or use an on-site liquid waste system until the department has granted final approval of

the system after installation or modification of the system is completed. No person shall occupy a newly constructed or transported dwelling for which an on-site liquid waste system is required until the department has granted such final approval and, if applicable, until the governmental body with authority to regulate construction has granted an occupancy permit. The department shall not grant final approval if the system as installed or modified does not meet the requirements of 20.7.3 NMAC.

E. The department may cancel a permit if the installation or modification of the on-site liquid waste system has not been completed within one (1) year after issuance or if the department determines that material information in the application is false, incomplete or inaccurate and that the correct information would have resulted in the department denying the original application. If a permit is canceled, the department shall notify the permittee of the decision in writing and the reason for cancellation and appropriate regulations cited.

F. Except as otherwise provided in Subsection G of this section, the department shall, within ten (10) working days after receipt of the completed application, grant the permit, grant the permit subject to conditions or deny the permit and shall notify the applicant of the action taken. Within five working days, the department shall determine if a permit application is administratively complete. The department shall notify the applicant if the application is administratively incomplete. The determination that an application is administratively complete does not mean that the proposed system meets the requirements of 20.7.3 NMAC.

G. If the department's initial review of the application indicates that the imposition of more stringent requirements may be necessary pursuant to Subsection M of 20.7.3.201 NMAC or Subsection B of 20.7.3.402 NMAC, the department may extend the time for the review of the application until twenty (20) working days after receipt of the completed application provided that the department shall notify the applicant of such extension within ten (10) working days after receipt of the completed application.

H. When the permit is granted subject to conditions, denied or more stringent conditions applied, the reason for the action shall refer to the appropriate regulation(s) and be given in writing. [20.7.3.402 NMAC - Rp, 20.7.3.201 NMAC, 9/1/05]

**20.7.3.403 PERMITTING ;
ADVANCED TREATMENT OR
ALTERNATIVE DISPOSAL:**

A. An application for a permit proposing advanced treatment (with

conventional or alternative disposal) or alternative disposal (with conventional treatment) may be submitted.

B. Applications shall include the information required for a conventional treatment or disposal system, and:

(1) for applications proposing advanced treatment with either conventional or alternative disposal:

(a) the applicant shall demonstrate that the system has been approved by the department and shall include operation and maintenance information, monitoring plans and maintenance agreements;

(b) the applicant must demonstrate the applicability and effectiveness of the technology on the site where it is to be used;

(c) a copy of all signed maintenance contracts between the property owner and a certified maintenance service provider shall be attached to the application;

(d) the property owner shall have all maintenance contracts in effect for the duration of the permit; and

(e) the property owner shall provide to the department copies of all maintenance contracts within 30 days of contract issuance or renewal; and

(2) for applications proposing alternative disposal with conventional treatment, the applicant shall include details of design, sizing, construction and operation. Such disposal systems include, but are not limited to, mounds, evapotranspiration, seepage pits, pressure dosed systems, alternating leach fields, non-discharging constructed wetlands, non-gravity systems and approved surface applications.

C. For applications proposing advanced treatment or alternative disposal, the department shall, within twenty (20) working days after receipt of the completed application, grant the permit, grant the permit subject to conditions or deny the permit and shall notify the applicant of the action taken.

D. When the permit is granted subject to conditions or the application denied, the reason for the action shall refer to the appropriate regulation and be given in writing.

E. For advanced treatment systems, the authorization to operate the system shall be valid until a change of ownership of the system occurs. At the time of transfer of ownership, the new owner shall provide the department a copy of the valid maintenance contract in the name of the new owner.

[20.7.3.403 NMAC - N, 9/1/05]

**20.7.3.404 PERMITTING ;
EXPERIMENTAL SYSTEMS:**

A. The department may issue a permit, on an individual basis, for the installation of an experimental on-site

liquid waste system. The permit applicant must demonstrate that the proposed system, by itself or in combination with other on-site liquid waste systems, will neither cause a hazard to public health nor degrade a body of water and that the proposed system will provide a level of treatment at least as effective as that provided by on-site liquid waste systems, except privies and holding tanks, that meet the requirements of 20.7.3 NMAC.

B. Prior to the approval of a permit for an experimental on-site liquid waste system, the experimental system shall be reviewed by the technical advisory committee pursuant to 20.7.3.905 NMAC.

C. A field demonstration, which meets the following requirements, shall be required for a proposed experimental system.

(1) Conditions for installation, operation, maintenance and monitoring at the proposed demonstration site shall be reviewed and approved by the department.

(2) On-site testing and evaluation, as required by the department and paid for by the permit applicant, shall be performed for a period specified by the technical advisory committee. The results of the evaluation period shall be forwarded to the technical advisory committee for review and further action.

(3) A contingency plan shall be included to provide liquid waste treatment that meets the requirements of 20.7.3 NMAC if the experimental system fails to meet the requirements of 20.7.3 NMAC.

(4) A copy of a signed maintenance contract between the property owners and a certified maintenance service provider shall be attached. The property owner shall have a maintenance contract in effect for the duration of the permit. The property owner shall provide to the department copies of all maintenance contracts required to be in effect within 30 days of contract issuance or renewal.

[20.7.3.404 NMAC - Rp, 20.7.3.306 NMAC, 9/1/05]

**20.7.3.405 PERMITTING ;
VARIANCES:**

A. Any person seeking a variance from the requirements contained in 20.7.3 NMAC shall do so by filing a written petition with the field office of the department having jurisdiction for the area where the system is to be installed.

B. The petition shall be made on a form provided by the department, signed by the petitioner or an authorized representative and accompanied by relevant documents or materials that supports the petitioner's request for a variance. The petitioner shall give notice to all landowners within 1000 feet of the proposed on-site liquid waste system for which the variance is

proposed. Said notice shall include the nature of the variance petition, the date of submission of the petition to the department, the address of the department field office to which the petition is being submitted and the time frame for department action as provided in Subsection D of 20.7.3.405 NMAC below.

C. Upon review of the petition, the department may require the submittal of other relevant information to provide reasonable assurance that the conditions set forth in Paragraphs (1) and (2) of Subsection E of 20.7.3.405 NMAC are met.

D. The department shall, after a minimum of ten (10) but not more than twenty (20) working days following receipt of the completed petition, grant the variance, grant the variance subject to conditions or deny the variance and shall so notify the applicant and any other person making a written submission concerning the petition. The reason for the department's action shall be provided in writing and the appropriate regulations cited.

E. The department shall deny the variance petition unless the petitioner establishes by clear and convincing evidence that:

(1) the proposed on-site liquid waste system will, by itself or in combination with other on-site liquid waste systems or other discharges subject to 20.6.2.3000 through 20.6.2.3114 NMAC, neither cause a hazard to public health or degrade any body of water; and

(2) granting the variance will result in public health and environmental protection equal to or greater than the minimum protection provided by the varied requirement.

F. The department shall maintain a file of all variances granted and denied. The file shall be open for public inspection.

[20.7.3.405 NMAC - Rp, 20.7.3.202 NMAC, 9/1/05]

20.7.3.406 PERMITTING ; APPEALS:

A. Any affected person who is dissatisfied with action taken by the department on a permit application or variance petition may appeal to the secretary. The request must be made in writing to the secretary within fifteen (15) working days after notice of the department's action has been issued. Unless an appeal is received by the secretary within fifteen (15) working days after notice to the applicant or petitioner of the department's action, the decision of the department shall be final.

B. If an appeal is received within the fifteen (15) working day 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. If the appeal is on a variance petition, the secretary shall also notify all persons involved under Subsection B of 20.7.3.405 NMAC of the hearing date, time and place of the hearing by certified mail.

C. In the appeal hearing, the burden of proof is on the person who requested the hearing. Where the department requires more stringent requirements pursuant to Subsection M of 20.7.3 NMAC, the burden of proof of the necessity for the more stringent requirements shall be upon the department.

D. Appeal hearings shall be held at a place designated by the secretary in the area where the proposed on-site liquid waste system is to be located, unless other mutually agreed upon arrangements are made. The secretary may designate a person 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. Upon request, the hearing shall be recorded. The person who requests the recording shall pay recording costs.

F. In appeal 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.

G. 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 Rule 1-075 NMRA.

[20.7.3.406 NMAC - Rp, 20.7.3.203 NMAC, 9/1/05]

20.7.3.407 through 20.7.3.500 [RESERVED]

20.7.3.501 DESIGN; LIQUID WASTE TREATMENT UNITS; GENERAL:

A. Plans for septic tanks shall be submitted to the department for approval and certification. Such plans shall show all dimensions, reinforcement, structural calculations and such other pertinent data as may be required by the department. Plans for advanced treatment units shall be submitted to the department for review by the technical advisory committee pursuant to 20.7.3.905 NMAC. Plans for advanced treatment units shall meet the requirements set forth by the technical advisory committee.

B. All treatment units and tanks, regardless of material or method of construction and unless otherwise specified in 20.7.3 NMAC, shall:

(1) be designed and constructed to withstand all reasonable lateral earth pressures under saturated soil conditions with the tank empty;

(2) have a minimum live load at the surface of 300 pounds per square foot with twelve (12) inches of cover unless heavier loads are expected;

(3) not be subject to excessive corrosion or decay;

(4) have the manufacturer's name, New Mexico registration number, year of construction and tank capacity in gallons permanently displayed on the tank above the outlet pipe;

(5) be watertight;

(6) not be constructed or manufactured on site, in the ground, when saturated soil conditions during construction are closer than three (3) inches to the bottom of the excavation;

(7) be protected against flotation under high ground water conditions and for units installed in floodplains;

(8) be installed so that they are easily locatable and accessible; and

(9) be approved by the international association of plumbing and mechanical officials (IAPMO); meet IAPMO minimum standards as demonstrated to the department by approved laboratory testing; or be recommended by the technical advisory committee and approved by the department.

C. Treatment units may be constructed of the following materials:

(1) precast reinforced concrete;

(2) poured-in-place concrete;

(3) fiberglass;

(4) polyethylene; or

(5) other materials as approved in writing by the department.

D. Metal, wooden, concrete block and homeowner built tanks are prohibited.

E. A secure lid shall con-

sist of one or more of the following:

- (1) a padlock;
- (2) a twist lock cover requiring special tools for removal;
- (3) covers weighing 58 pounds or more, net weight;
- (4) a hinge and hasp mechanism that uses stainless steel or other corrosion resistant fasteners to fasten the hinge and hasp to the lid and tank for fiberglass, metal or plastic lids; or
- (5) other mechanisms approved by the department.

F. Wherever vehicular traffic is anticipated to cross over the liquid waste treatment unit, pump station or pump chamber, the unit shall be designed by a professional engineer to withstand the anticipated traffic loading.

G. All solid wall pipe connections, fittings and penetrations shall be watertight.

H. Each tank shall be structurally designed to withstand all anticipated earth or other loads. All septic tank covers shall be capable of supporting an earth load of not less than three hundred (300) pounds per square foot when the maximum fill coverage does not exceed three (3) feet.

I. Fiberglass or reinforced plastic treatment units shall be certified to IAPMO standards. Fiberglass or plastic tanks shall be installed according to the manufacturer's instructions. A copy of the manufacturer's installation instructions shall be available for inspection by the department at the installation site.

J. Concrete liquid waste treatment units.

- (1) Minimum concrete thickness.
 - (a) Walls: Two and one-half (2 1/2) inches in thickness.
 - (b) Floors: Three (3) inches in thickness.
 - (c) Covers: Three (3) inches in thickness.
- (2) Floors shall be an integral part of the tank.
- (3) Where sections are used, tongue and groove joints or keyways shall be used and shall be sealed with an approved sealer and shall be watertight.
- (4) Poured-in-place tanks shall be designed and certified by a professional engineer.
- (5) All concrete liquid waste treatment units, except those approved for use utilizing concrete meeting type V specifications, shall be protected from corrosion by coating internally with an approved bituminous coating or by other acceptable means. The coating shall cover all exposed concrete and shall extend to at least 6 inches below the waterline.
- (6) Treatment unit construction materials shall meet the following mini-

mum specifications:

- (a) concrete strength - 3500 psi @ 28 days, density 140 PCF;
 - (b) cement Portland type II or V per ASTM C150-04ae1;
 - (c) admixtures per ASTM C233-04; and
 - (d) reinforcing per ASTM A615 for wire fabric, grade 40/60 R'd or equivalent.
 - (7) Be installed level on undisturbed or compacted soil.
- [20.7.3.501 NMAC - Rp, 20.7.3.402 NMAC, 9/1/05]

20.7.3.502 DESIGN; CONVENTIONAL TREATMENT UNITS; CONSTRUCTION STANDARDS:

A. All conventional treatment units, regardless of material or method of construction and unless otherwise specified in this part, shall be designed to produce a clarified effluent and shall provide adequate space for sludge and scum accumulations based on a minimum hydraulic retention time of 24 hours at maximum sludge depth and scum accumulation.

B. Septic tanks shall have a minimum of two (2) compartments. The inlet compartment of a septic tank shall be two-thirds (2/3) of the total liquid capacity of the tank, but not less than five-hundred (500) gallons liquid capacity, and shall be at least three (3) feet in width and five (5) feet in length. Liquid depth shall be not less than two (2) feet and six (6) inches nor more than six (6) feet. The second compartment of a septic tank shall have a liquid capacity of one-third (1/3) of the total capacity of such tank. In septic tanks having over fifteen hundred (1500) gallons capacity, the second compartment may not be less than three (3) feet in length.

C. Multiple tanks installed in series may be allowed with department approval provided the total tank volume is at least 2.5 times the total design flow. Minimum tank sizes are as follows:

- (1) for flows up to 1000 gpd, the capacity of each tank must be at a minimum 900 gallons; and
- (2) for flows between 1000 and 2000 gpd, the capacity of each tank must be a minimum of 1200 gallons.

D. Access to each septic tank shall be provided by at least two access openings, each of which shall be at least twenty (20) inches in minimum dimension. One access opening shall be placed over the inlet and one access opening shall be placed over the outlet. Whenever a first compartment exceeds twelve (12) feet in length, an additional access opening shall be provided over the baffle wall. Each access opening shall be extended to the surface of the ground with a secure lid. These extensions shall be twenty-four (24) inches in diameter

for depths of 0-3 feet and for depths greater than 3 feet shall be at least 30 inches in diameter with an approved lid that conforms to Subsection E of 20.7.3.501 NMAC. If the extensions are made of concrete, they shall be coated with a coating approved by the department. "Wet-or-dry" coatings and mastics, or other water-based materials are not acceptable. Materials for the extensions shall be approved by the department.

E. The inlet and outlet pipe openings shall be not less in size than the connecting sewer pipe and shall have a watertight seal approved by the department. The vertical leg of round inlet and outlet fittings shall not be less in size than the connecting sewer pipe nor less than four (4) inches. A baffle type fitting shall have the equivalent cross-sectional area of the connecting sewer pipe and not less than a four (4) inch horizontal dimension when measured at the inlet and outlet pipe inverts, unless it is a pumped system.

F. The inlet and outlet pipe or baffle shall extend at least four (4) inches above and at least twelve (12) inches below the water surface. The invert of the inlet pipe shall be at a level not less than two (2) inches above the invert of the outlet pipe. Inlet and outlet pipe or baffles shall be, at a minimum, schedule 40 PVC, ABS or cast-in-place concrete. Such approved pipe shall be SDR 35 or better.

G. Inlet and outlet pipe fittings or baffles and compartment partitions shall have a free vent area equal to the required cross-sectional area of the building sewer or private sewer discharging into the septic tank to provide free ventilation above the water surface from the disposal field or seepage pit through the septic tank, building sewer and stack to the outer air.

H. All septic tanks shall include an effluent filter approved by the department, installed on the outlet of the tank before final discharge, with an access riser installed to grade.

I. The sidewalls, except on cylindrical tanks, shall extend at least nine (9) inches above the liquid depth. The cover of the septic tank shall be at least two (2) inches above the back vent openings.

J. Partitions or baffles between compartments shall be of solid, non-corrosive, durable material and shall extend at least four (4) inches above the water level. Metal or wooden baffles are prohibited.

(1) An inverted fitting equivalent in size to the tank inlet, but in no case less than four (4) inches in size, shall be installed in the inlet compartment side of the baffle with the bottom of the fitting placed midway in the depth of the liquid.

(2) If a horizontal slot is used, the slot shall extend the width of the tank, be no more than 6 inches in height and located

midway in the depth of the liquid.

K. Fiberglass or reinforced plastic tanks shall be certified to IAPMO standards.

(1) Each access and inspection hole cover shall have approved fasteners not subject to deterioration by liquid or gases normally present in septic tank systems to assure that the covers will remain in place. All covers shall overlap the hole by a minimum of two (2) inches in all directions.

(2) Each tank shall be free from visual defects such as foreign inclusions, dry spots, air bubbles, pimples and delamination. The inner and outer surfaces shall have a smooth, continuous finish with no exposed fibers. Both the inner and outer surfaces shall have a continuous resin rich surface and no fibers shall be exposed either directly from cracks, porosity or holes, or indirectly through bubbles that may break and expose fibers.

[20.7.3.502 NMAC - Rp, 20.7.3.402 NMAC, 9/1/05]

20.7.3.503 through 20.7.3.600

[RESERVED]

20.7.3.601 DESIGN; ADVANCED TREATMENT UNITS; GENERAL:

A. The level of treatment required and the type of disposal allowed shall be determined by the site evaluation and the character of the waste to be treated and disposed using 20.3.7.605 NMAC. A liquid waste system with an approved non-discharging disposal design may be installed in lieu of the required advanced treatment system.

B. All proprietary treatment systems proposed for secondary or tertiary treatment must meet the performance standards of 20.7.3.602-604 NMAC, and must be certified by the technical advisory committee for that level of treatment.

C. Any design of a conventional or advanced treatment system with site or other limiting conditions that cannot be addressed by following a standard design from alternative resources recognized by the department shall be designed and sealed by a professional engineer.

D. Ventilation of advanced treatment units shall be in accordance with the manufacturer's recommendation.

[20.7.3.601 NMAC - N, 9/1/05]

20.7.3.602 DESIGN; SECONDARY TREATMENT STANDARDS:

A. Secondary treatment systems shall meet the following requirements:

(1) 5-day biochemical oxygen demand not to exceed a 6-sample rolling average of 30 mg/l with no single sample to

exceed 60 mg/l; and

(2) total suspended solids not to exceed a 6-sample rolling average of 30 mg/l with no single sample to exceed 60 mg/l.

B. Secondary treatment systems and the disposal from secondary treatment systems shall meet the specific site conditions set forth in 20.7.3.605 NMAC.

[20.7.3.602 NMAC - N, 9/1/05]

20.7.3.603 DESIGN; TERTIARY TREATMENT STANDARDS:

A. Tertiary treatment systems shall provide nutrient removal in addition to secondary treatment.

B. Utilizing the standard loading equation, (flow (gpd) X conc. (mg/l) X 8.34 lbs./gal. X 365 days/yr) / 1,000,000 = lbs./yr/ac., and assuming an average of 60 mg/l of TN in the septic tank effluent and a maximum flow of 500 gpd/ac, the following simplified equation shall be used for determining the required TN concentration allowed for a specific lot size: total nitrogen concentration (in mg/l) = [lot size (in acres) / design flow (in gpd)] x 30,000. The concentration limit shall be based on a 6-sample rolling average with no single sample exceeding twice the concentration limit.

C. Tertiary treatment systems and the disposal from tertiary treatment systems shall meet the specific site conditions set forth in 20.7.3.605 NMAC.

[20.7.3.603 NMAC - N, 9/1/05]

20.7.3.604 DESIGN; DISINFECTION TREATMENT STANDARDS:

A. Systems requiring disinfection shall provide treated effluent that shall not exceed 200 colony forming units (CFUs) of fecal coliform bacteria per 100 ml.

B. Disinfection is required to meet the specific site conditions set forth in 20.7.3.605 NMAC.

C. When disinfection is required, the effluent shall be subject to a minimum of secondary treatment prior to disinfection.

[20.7.3.604 NMAC - N, 9/1/05]

20.7.3.605 DESIGN; MINIMUM REQUIRED TREATMENT LEVELS FOR SITE CONDITIONS:

A. The required level of treatment shall be based on the most restrictive combination of siting conditions.

B. The following treatment levels are required for the soil types as described in Table 703.1:

(1) type Ia - secondary treatment and disinfection;

(2) type Ib, II, and III - primary treatment; and

(3) type IV - secondary treatment with a low pressure dosed disposal system.

C. The following treatment levels are required for the depth of suitable soil:

(1) greater than or equal to 4 feet of suitable soil - primary treatment;

(2) from 2 to 4 feet of suitable soil - secondary treatment and disinfection; and

(3) less than or equal to 2 feet of suitable soil - tertiary treatment and disinfection.

D. The following treatment levels are required for the hydraulic loading rates and lot size:

(1) less than or equal to 500 gallons per day per acre with a minimum lot size of 0.75 acre - primary treatment; and

(2) greater than 500 gallons per day per acre or less than 0.75 acre - tertiary treatment.

(3) For lots less than 3/4 acre overlying naturally occurring anoxic groundwater, secondary treatment shall be required and tertiary treatment may be required. To be exempt from tertiary treatment requirements, the permit applicant shall show by clear and convincing evidence that the discharge of liquid waste shall not degrade a body of water.

E. A non-discharging system may be used in lieu of advanced treatment.

F. A mound system in accordance with 20.7.3.807 NMAC may be used to meet clearance requirements or to overcome soil type limitations in lieu of advanced treatment.

G. If the existing level of nitrate in the groundwater exceeds 5 mg/l, a more advanced level of nitrogen reduction as set forth in Subsection B of 20.7.3.603 NMAC may be required.

[20.7.3.605 NMAC - N, 9/1/05]

20.7.3.606 through 20.7.3.700

[RESERVED]

20.7.3.701 DESIGN; CONVENTIONAL DISPOSAL FIELD; DESIGN AND CONSTRUCTION:

A. For conventional systems, the distribution lines shall have an inside diameter of no less than four (4) inches. Perforated pipe shall have two rows of holes and a minimum perforated area of one and one-half (1 1/2) square inches per linear foot. Perforations shall be located not less than 30 degrees or more than 60 degrees from the vertical on either side of the center line of the bottom of the pipe. All plastic pipe and fittings shall conform to the current and appropriate ASTM standards. End caps shall be installed on all distribution lines.

B. Before placing aggregate

gate or drain lines in a prepared excavation, all smeared or compacted surfaces shall be removed from trenches by raking to a depth of one (1) inch and the loose material removed. Aggregate shall be placed in the trench to the depth and grade required. Drain lines shall be placed on the aggregate in an approved manner. The drain lines shall then be covered with aggregate to a minimum depth of two (2) inches and then covered with untreated building paper, straw or similar porous material to prevent closure of voids with earth backfill. When geotextile fabric is utilized, no aggregate cover of the drainlines is required. No earth backfill shall be placed over the aggregate cover until authorized or approved by the department.

C. The department shall allow drainfields for proprietary systems to be sized in accordance with recommendations by the technical advisory committee that have been approved by the secretary. The technical advisory committee shall make its recommendations upon standardized, objective evaluations in accordance with Section 9-7A-15 NMSA 1978. Drainfields for proprietary systems shall not be reduced in size by more than 30% in comparison to a conventional system.

D. Capped inspection ports shall be constructed, at a minimum, of 4 inch diameter, SDR 35 or better pipe installed at the end of each trench, provide inspection access to the bottom of the trench and terminate at finished ground level.

E. If seepage pits, authorized by variance only, are used in combination with disposal fields, the aggregate in the trenches shall terminate at least five (5) feet from the pit excavation and the line extending from such points to the seepage pit shall be constructed of approved pipe with watertight joints.

F. Where two (2) or more drain lines are installed, an approved distribution box of sufficient size to receive lateral lines shall be installed at the head of each disposal field. The inverts of all outlets shall be level and the invert of the inlet shall be at least one (1) inch above the outlets. Distribution boxes shall be designed to insure equal flow and shall be installed on a level base in natural undisturbed or compacted soil or on a concrete footing.

(1) Concrete distribution boxes shall be coated on the inside with bituminous coating or other approved method acceptable to the department.

(2) All laterals from a distribution box to the disposal field shall be approved pipe with watertight joints. Multiple disposal field laterals, wherever practicable, shall be of uniform length.

(3) Connections between a septic tank and distribution box shall be laid with approved pipe with watertight joints on natural ground or compacted fill. Such approved pipe shall be SDR 35 or better.

(4) When two (2) or more drain lines are installed, the installer, after approval by the department, may install in lieu of a distribution box a tee fitting and a distribution header to multiple trenches provided that the tee and header pipe is level.

G. When more than five-hundred (500) lineal feet of leach line is required, a low-pressure dosed system shall be used.

H. Disposal fields shall be constructed as follows:

	MINIMUM	MAXIMUM
Number of drain lines	1 per field	
Length of each line	--	150 ft.
Bottom width of trench	12 in.	36 in.
Depth of earth cover of lines	9 in.	--
Depth of Trench	--	6 ft.
Grade of lines	level	3 inch/100 ft.
Aggregate under drain lines	12 in.	--
Aggregate over drain lines with:		
geotextile fabric	0 in.	--
other material	2 in.	--

I. Minimum spacing between trenches or leaching beds shall be four (4) feet plus (2) feet for each additional foot of depth in excess of one (1) foot below the bottom of the drain line. Distribution drain lines in leaching beds shall not be more than six (6) feet apart on centers and no part of the perimeter of the leaching bed shall be more than three (3) feet from a distribution drain line.

J. When necessary to prevent line slope in excess of 3 inches per 100 feet, absorption trenches or beds shall be stepped. The lines between each horizontal section shall be made with watertight joints and shall be designed so each horizontal trench or bed shall be utilized to the maximum capacity before the effluent shall pass to the next lower trench or bed. The lines between each horizontal absorption section shall be made with approved watertight joints and installed on natural or unfilled ground.

[20.7.3.701 NMAC - Rp, 20.7.3.405 NMAC, 9/1/05]

[For specifications for drainfield pipes, see the following standards: D3034-04a, ASTM F405-97, Standard Specification for Corrugated Polyethylene (PE) Tubing and Fittings, or ASTM F810-01]

20.7.3.702 DESIGN; SEEPAGE PIT; DESIGN AND CONSTRUCTION: Installation of seepage pits shall be by variance only.

A. The minimum capacity of seepage pits shall conform to the requirements of 20.7.3.703 NMAC.

B. Multiple seepage pit installations shall be served through an approved distribution box or be connected in series by means of a watertight connection laid on undisturbed or compacted soil. The outlet from each seepage pit shall have an approved vented leg fitting extending at least twelve (12) inches below the inlet fitting.

C. Each seepage pit shall have an excavated horizontal dimension of not less than four (4) feet. Each such pit shall be lined with approved type whole, new, hard-burned clay brick, concrete brick, concrete circular type cesspool blocks or other approved materials.

D. The lining in each seepage pit shall be circular and laid on a firm foundation. Lining materials shall be placed tight together and laid with joints staggered. Except in the case of approved type pre-cast concrete circular sections, no brick or block shall be greater in height than its width and shall be laid flat to form at least a four (4) inch wall. Brick or block greater than twelve (12) inches in length shall have chamfered matching ends and be scored to provide for seepage. Excavation voids behind the brick, block or concrete liner shall have a minimum of six (6) inches of clean three fourths (3/4) inch gravel or rock.

- E. All brick or block used in seepage pit construction shall have a minimum compressive strength of twenty-five hundred (2500) pounds per square inch.
- F. Each seepage pit shall have a minimum sidewall (not including the arch) of ten (10) feet below the inlet pipe.
- G. The arch, cover or dome of any seepage pit shall be constructed in one of the following three ways.
 - (1) Approved type hard-burned clay brick, solid concrete brick or block laid in cement mortar.
 - (2) Approved brick or block laid dry. In both of the above methods, an approved cement mortar covering of at least two (2) inches in thickness shall be applied, said covering to extend at least six (6) inches beyond the sidewalls of the pit.
 - (3) Approved type one or two piece reinforced concrete slab of three thousand (3000) pounds per square inch minimum compressive strength, not less than five (5) inches thick and designed to support an earth load of not less than four hundred (400) pounds per square foot.
- H. Each such arch, dome or cover shall be provided with a nine (9) inch minimum inspection hole with plug or cover and shall be coated on the underside with an approved bituminous or other nonpermeable protective compound.
- I. The top of the arch, dome or cover must be a minimum of twelve (12) inches but not more than four (4) feet below the surface of the ground. Risers must be provided to extend the arch, dome or cover to within twelve (12) inches of the surface.
- J. An approved vented inlet fitting shall be provided in every seepage pit so arranged as to prevent the inflow from damaging the sidewall. When using a one or two piece concrete slab cover inlet, the inlet fitting may be an approved one fourth (1/4) bend fitting discharging through an opening in the top of the slab cover. On multiple seepage pit installations, the outlet fittings shall meet the requirements of Subsection B of 20.7.3.702 NMAC. [20.7.3.702 NMAC - Rp, 20.7.3.406 NMAC, 9/1/05]

20.7.3.703 DESIGN; AREA OF DISPOSAL FIELD AND SEEPAGE PITS:

- A. The minimum required absorption area in a disposal field in square feet, and in seepage pits in square feet of side wall, shall be predicated on the liquid waste design flow rate and shall be determined by utilizing the following Table 703.1 based on the soil classification found in the proposed location of the disposal field.
- B. The soil classification shall be determined by two test holes located at opposite ends of the proposed disposal area.
- C. A detailed soil profile, in accordance with USDA soil classification methodology, shall be submitted with the liquid waste application for each hole, indicating soil horizons, horizon thickness as a function of depth, and soil texture.
- D. USDA soil surveys may be used where available to help assess typical soils in the area of the proposed installation.
- E. The required absorption area shall be sized on the most restrictive soil horizon located below and within 4 feet of the bottom the absorption area.
- F. Conventional treatment systems shall not be constructed in type Ia soils where the depth to groundwater is less than 30 feet, type IV soils, or gravel. For these soils, refer to 20.7.3.605 NMAC.
- G. Effluent distribution to type IV soils shall be accomplished by means of timed low pressure dosed distribution.
- H. The required absorption area shall be calculated by the following formula: $ABSORPTION\ AREA = Q \times AR$, where: Q = the design flow rate in gallons per day; AR = application rate (from Table 703.1)

Table 703.1: Application Rates by Soil Types for Conventional Treatment Systems

Soil Type	Soil Texture	Application Rate (AR) (sq. ft./gal/day)
Ia	Coarse Sand	1.25 (See Subsection F of 20.7.3.703 NMAC)
Ib	Medium Sand, Loamy Sand	2.00
II	Sandy Loam, Fine Sand , Loam	2.00
III	Silt, Silt Loam, Clay Loam, Silty Clay Loam, Sandy Clay Loam	2.00
IV	Sandy Clay, Silty Clay, Clay	5.00 (See Subsection G of 20.7.3.703 NMAC)

- I. The gravel content of in-place natural soil shall not exceed 30%.
- J. Disposal trenches shall conform to the following.
 - (1) The trench width shall be no less than one foot or no more than three feet.
 - (2) A minimum of six inches of aggregate shall be placed below the invert of the distribution pipe to provide surge storage. This area of trench sidewall shall not be used in calculating the absorption area.
 - (3) Up to an additional three feet of aggregate may be placed below the distribution pipe.
 - (4) The total absorption area shall be calculated utilizing the total trench bottom and sidewall area, excluding the six inches of

trench sidewall required in Paragraph (2) of this subsection.

(5) The total absorption area shall not exceed seven square feet per linear foot of trench.

(6) A minimum of one hundred and fifty (150) square feet of bottom area shall be provided for each system exclusive of any hard pan, caliche, rock, clay or other impervious formations.

K. Leaching (absorption) beds are allowed. The absorption area of the bed shall be at least fifty (50) percent greater than the minimum required absorption area for trenches with a minimum of two hundred and twenty-five (225) square feet of bottom area. In addition, leaching beds shall conform to the following.

(1) A minimum of twelve inches of aggregate shall be placed below the invert of the distribution pipes.

(2) Up to an additional one foot of aggregate may be placed below the distribution pipes.

(3) The total absorption area shall be calculated utilizing the total bed bottom and sidewall area.

L. The minimum effective absorption area in any seepage pit shall be calculated as the excavated side wall area below the inlet pipe exclusive of any hardpan, caliche, rock, clay or other impervious formations and may be provided in one or more seepage pits.

M. For secondary and tertiary treated effluent, the minimum calculated absorption area required for conventional treatment may be reduced 30% and the maximum trench depth may be no greater than 10 feet. In no case shall the maximum reduction for the drainfield absorption area exceed 30%.

[20.7.3.703 NMAC - Rp, 20.7.3.403 NMAC, 9/1/05]

20.7.3.704 through 20.7.3.800

[RESERVED]

20.7.3.801 DESIGN; ALTERNATIVE DISPOSAL: Alternative disposal systems include, but are not limited to, privies, cluster systems, composting/incinerating toilets, evapotranspiration systems, mounds, subsurface irrigation, surface application, holding tanks, graywater systems and others as approved by the department.

[20.7.3.801 NMAC - N, 9/1/05]

20.7.3.802 PRIVIES:

A. A privy or outhouse may be used to dispose of non-liquid-carried human excreta directly to the soil. In addition to all setback and clearance requirements in 20.7.3 NMAC, the following conditions are required.

(1) The privy or outhouse is con-

structed to prevent access by flies or vermin.

(2) The privy or outhouse is located to prevent flooding.

(3) There is sufficient replacement area for two (2) additional pits.

(4) Privy or outhouse pits shall be filled with clean earth when excreta accumulates to within one foot of the ground surface.

(5) No privy or outhouse shall be located on a lot less than 0.75 acre.

B. No person shall install or have installed a privy or outhouse unless that person obtains a permit issued by the department prior to construction of such installation. At the time of application, the total number of privies or outhouses and their replacement locations shall be indicated. When a privy or outhouse pit is filled, the privy or outhouse may be moved to a previously identified replacement location on the same lot without modifying or amending the permit.

[20.7.3.802 NMAC - N, 9/1/05]

20.7.3.803 CLUSTER SYSTEMS:

A. Use of a cluster system may be considered when lot sizes, location or site conditions make conventional disposal unacceptable.

B. Cluster systems shall be designed and constructed in accordance with the requirements of this regulation. In addition, cluster systems shall be maintained in accordance with 20.7.3.902 NMAC.

C. Each user and successors and assignees in interest connected to the system shall be a permittee and shall be indicated on the permit.

D. Each permittee and successors and assignees in interest on a cluster system shall be a party to a legally binding, written agreement that provides for the mutual ownership, service and maintenance for the life of the system. The agreement shall be recorded in the county in which the property is located. A copy of the agreement shall be provided to the department.

E. The parties to the written agreement shall obtain all necessary rights-of-way, easements or ownership of properties necessary for the operation of the system. All parties that use the cluster system shall be a party to the agreement.

F. The combined area of the lots served by the cluster system plus the area of the parcel where the system is located, if separated from the lots served, shall be used to determine the allowable lot size.

[20.7.3.803 NMAC - N, 9/1/05]

20.7.3.804 COMPOSTING AND INCINERATING TOILETS:

A. The installation of com-

posting and incinerating toilets certified as meeting ANSI/NSF International Standard 41 shall be permitted.

B. The installation of a composting/incinerating toilet shall not reduce the design flow for the property.

C. Composting/incinerating toilets shall not be used on a lot less than 0.75 acre.

[20.7.3.804 NMAC - N, 9/1/05]

20.7.3.805 IRRIGATION/REUSE SYSTEMS:

A. Effluent may be used for irrigation provided that, at a minimum, it shall meet secondary treatment standards prior to use.

B. The effluent may only be utilized subsurface.

C. Application of the effluent resulting in standing or ponding of the effluent, whether liquid or frozen, shall be prohibited. The application of effluent shall not result in the effluent leaving the application area.

D. Irrigation systems shall have no cross connections, direct or indirect, with potable water systems.

E. All irrigation systems shall be pressure dosed to assure an even distribution and loading of effluent throughout the application area.

F. All parts of the reuse system shall be protected from freezing.

G. Effluent shall be contained on the permitted property.

H. The effluent shall be applied to a suitable landscaped area.

I. Secondary treated and disinfected effluent may be used for toilet flushing or fire suppression with department approval.

[20.7.3.805 NMAC - N, 9/1/05]

20.7.3.806 EVAPOTRANSPIRATION SYSTEMS:

A. Evapotranspiration systems shall consist of a treatment unit and an evapotranspiration bed (ET bed) for disposal. Effluent discharged to an ET bed shall not exceed 200 mg/l of BOD. Evapotranspiration systems shall meet the requirements of 20.7.3.302 NMAC. Unlined ET beds are a discharging system and shall meet the clearance, setback and lot size requirements for conventional absorption systems. Lined ET beds are nondischarging systems and shall be underlain by a liner as specified in Paragraph (3) of Subsection L of 20.7.3.7 NMAC and shall provide for a leak detection method.

B. The minimum bottom area of ET beds shall be determined from the following formula:

$A = 391 \times Q / E_L$, where: A = the bottom area of the bed in square feet; Q = the design flow in gallons per day; and E_L = the

average annual lake evaporation for the site in inches per year.

C. The average annual lake evaporation shall be determined from the map "Gross Annual Lake Evaporation, New Mexico", USDA, April 1972, or successor version or a mutually acceptable evaporation rate.

D. The minimum bed depth shall be twenty four (24) inches as measured from the bottom of the ET bed to the overflow level. The surface crowning, which increases runoff from the ET bed, is above the overflow level of the ET bed. Maximum ET bed depth shall be thirty (30) inches. The bottom of the ET bed shall be level.

E. The ET bed location shall be in an area where exposure to the sun and wind will be maximized.

F. The distribution piping within the ET bed shall be embedded in gravel and covered meeting the specifications in 20.7.3.701 NMAC. Use of approved proprietary drainfield products may be used in lieu of pipe and gravel.

G. The capillary sand fill shall contain eighty five (85%) or more sand; the percentage of silt plus one and one-half times the percentage of clay shall not exceed fifteen percent (15%). Fine to medium sand is preferred.

H. A loamy sand shall be used for the surface crown. Where a loamy sand is not available, capillary sand may be used.

I. The crown surface shall be planted with vegetation suited to the climate and soil of the site and to the wastewater quality and quantity.

J. For a gravity feed system the overflow height of the ET bed shall be lower than the invert of the septic tank outlet.

K. All ET beds shall be equipped with an inspection port that is suitable to use to pump the system, if needed. [20.7.3.806 NMAC - N, 9/1/05]

20.7.3.807 MOUND SYSTEMS:

A. Mound systems shall meet the requirements of 20.7.3.302 NMAC.

B. Mounds are generally constructed entirely above the surrounding ground surface, however, the mound may be partially buried.

C. The design of the mound system shall be in accordance with the most current design standards of the Wisconsin mound system.

D. Pressure distribution to the mound shall be required.

E. For type III and IV soils, mounds shall not be installed on slopes greater than six percent (6%). For

type Ia through II soils, mounds shall not be installed on slopes greater than twelve percent (12%).

F. The finished side slope of the mound shall be at a maximum 1:4 vertical to horizontal slope. [20.7.3.807 NMAC - N, 9/1/05]

20.7.3.808 LOW PRESSURE DOSED DISPOSAL SYSTEMS:

A. Low pressure dosed (LPD) disposal systems may be used to achieve uniform distribution of wastewater over the entire infiltrative surface. Effluent from this type of system is pumped under low pressure through solid pipe into perforated lateral lines installed within a disposal system.

B. Low pressure dosed disposal systems may be used with any on site liquid waste system including conventional treatment systems, gray water systems and advanced treatment systems.

C. Low pressure dosed disposal systems may be used with any disposal system including trenches, beds, mounds, gravelless systems, evapotranspiration systems and drip irrigation.

D. Lift stations are not classified as low pressure dosed disposal systems.

E. Low pressure dosed disposal systems may use a timer to equalize the flow over a 24-hour period. LPD disposal systems may also be designed to rotate between separate disposal areas by using rotator valves.

F. Low pressure dosed disposal systems may use dosing siphons or pumps.

G. All pumps shall be rated by the manufacturer for pumping sewage or effluent.

H. A single pump may be used for design flows equal to or less than 1,000 gpd. Dual pumps are required for design flows over 1,000 gpd.

I. Design of the system shall include:

- (1) design flow;
- (2) soil absorption area sized according to the effluent loading rates found in 20.7.3.703 NMAC;
- (3) spacing between lines with a minimum of 2 feet of separation;
- (4) length of pipe;
- (5) diameter of perforated lateral lines used;
- (6) size and spacing of holes or emitters; and
- (7) pump performance sizing with allowances for head and friction losses at rated flows in gallons per minute.

J. A ball valve shall be located vertically at the end of each lateral line for inspection and flushing except for

proprietary drip irrigation systems.

K. Approved proprietary drip irrigation systems shall be designed and installed according to manufacturer's specifications.

L. Lateral lines shall be placed parallel to the natural contours of the site.

M. The distribution holes in the lateral lines shall be shielded or protected in some manner to prevent the infiltration of soil into the pipe.

[20.7.3.808 NMAC - N, 9/1/05]

20.7.3.809 HOLDING TANK REQUIREMENTS:

A. The installation of holding tanks for the disposal of liquid wastes shall be authorized on a temporary basis only and only for residential units where conventional or alternative liquid waste treatment systems cannot be installed, except where noted in paragraph E below.

B. The installation of holding tanks shall not be authorized for commercial units.

C. Holding tanks shall not be installed to serve any design flow greater than 375 gallons per day, except to replace an existing holding tank. Total design flow on any property served by a holding tank shall not exceed 375 gallons per day.

D. The installation of holding tanks shall be authorized for no more than one (1) year from the date of installation for units occupied more than one hundred twenty (120) days per calendar year.

E. The installation of holding tanks shall be authorized for permanent use only for the following:

(1) residential units, with a design flow rate of 375 gpd or less, occupied one hundred twenty (120) days or less per calendar year;

(2) residential units utilizing the holding tank only for the discharge of toilet waste in conjunction with a conventional treatment system for the remainder of the wastewater;

(3) non-residential, non-commercial units, such as guard shacks, toll booths, etc., with a design flow rate of 100 gpd or less; and

(4) the collection of RV wastes and portable toilet wastes for disposal in accordance with 20.7.3.306 NMAC.

F. Holding tanks shall be constructed of the same materials, by the same procedures and to the same standards as described in 20.7.3.501-502 NMAC except that they shall have no discharge outlet.

G. All holding tank installations shall be tested on site for water tightness.

H. The minimum size of a holding tank shall be 1000 gallons or four (4) times the design flow, whichever is greater.

I. Holding tanks shall be located in an area readily accessible to a pump vehicle under all weather conditions and where accidental spillage during pumpage will not create a nuisance or a hazard to public health.

J. Holding tanks shall be protected against flotation under high ground water conditions by weight of tank (ballasting), earth anchors or by surface or shallow installation. Holding tanks shall be protected from freezing.

K. Holding tanks shall be equipped with a visible and audible high water alarm system placed in a conspicuous location approved by the department. The alarm shall be set to activate at 80% of the tank capacity. It shall be a violation of these regulations to tamper with or disconnect the alarm system.

L. The owner of a holding tank shall have the tank pumped to prevent discharge from the tank and the liquid waste (septage) properly disposed of in compliance with all applicable laws and regulations. Owners of holding tanks shall maintain records demonstrating pumping and proper disposal of septage from the units to prevent discharge. Copies of pumping and disposal manifests shall be retained by the owner for at least seven years and shall be made available to the department for inspection on request. The records shall be:

(1) kept on a form provided by the department if requested;

(2) accompanied by such other documentation as the department may reasonably require;

(3) signed by the lot owner or an authorized representative; and

(4) submitted on a semi-annual basis, or a schedule otherwise determined by the department, to the department field office having jurisdiction.

M. No person shall install, operate, modify or maintain a holding tank that allows discharge to the soil or to waters of the state.

N. The department may perform site inspections periodically to ensure that a holding tank does not discharge.

O. All residential and commercial units utilizing a holding tank shall connect to a public sewer upon availability and in accordance with the local authority that has jurisdiction. A public sewer shall be deemed available when the public sewer is located in any thoroughfare, right-of-way or easement abutting the lot on which the residential or commercial unit is located. The holding tank shall be properly abandoned in accordance with 20.7.3.307

NMAC within 30 days of connection to the public sewer.

[20.7.3.809 NMAC - Rp, 20.7.3.305 NMAC, 9/1/05]

20.7.3.810 GRAYWATER DISCHARGES: Graywater discharge of less than 250 gallons per day of private residential graywater originating from a residence for the resident's household flower gardening, composting or landscaping irrigation shall be allowed if:

A. a constructed graywater distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

B. a graywater storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

C. a graywater system is sited outside of a floodway;

D. graywater is vertically separated at least five feet above the ground water table;

E. graywater pressure piping is clearly identified as a nonpotable water conduit;

F. graywater is used on the site where it is generated and does not run off the property lines;

G. graywater is discharged in a manner that minimizes the potential for contact with people or domestic pets;

H. ponding is prohibited, discharge of graywater is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

I. graywater is not sprayed;

J. graywater is not discharged to a watercourse;

K. graywater use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;

L. graywater is not stored longer than 24 hours before being discharged;

M. graywater use for purposes other than irrigation or composting is prohibited, unless a permit for such use is issued by the department;

N. graywater is not used to irrigate food plants except for fruit and nut trees;

O. graywater is discharged to a mulched surface area or to an underground irrigation system;

P. graywater is not discharged closer than 100 feet to a watercourse or private domestic well, or closer than 200 feet to a public water supply well;

Q. graywater does not create a public nuisance;

R. for residential units using an on-site liquid waste system for blackwater treatment and disposal, the use of a graywater system does not change the design, capacity or absorption area requirements for the on-site liquid waste system at the residential unit, and the on-site liquid waste system is designed and sized to handle the combined blackwater and graywater flow if the graywater system fails or is not fully used; and

S. graywater does not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags or disposing of waste solutions from home photo labs or similar hobbyist or home occupational activities.

[20.7.3.810 NMAC - Rp, 20.7.3.310 NMAC, 9/1/05]

20.7.3.811 GRAYWATER SYSTEMS: Graywater systems not meeting the requirements of 20.7.3.810 NMAC shall meet the following requirements:

A. The installation of separate graywater systems shall be authorized for single-family residential units and shall be located on the lot served. The capacity of the on-site liquid waste system, including required replacement area, shall not be decreased or otherwise affected by the existence or proposed installation of a graywater system servicing the lot.

B. All information required in 20.7.3.402 NMAC for the issuance of a permit shall be required.

C. Design flows for graywater systems shall be calculated by the following:

(1) Twenty percent (20%) of the total design flow for the segregation of laundry waste; and

(2) Thirty-three percent (33%) of the total design flow for the segregation of the bathroom (showers, tubs and wash basin) waste.

D. For graywater systems on lots where the residential unit is served by a sewerage system, the minimum lot size set forth in 20.7.3.301 NMAC shall not be required.

E. Clearance requirements for graywater systems shall meet the requirements of 20.7.3.303 NMAC.

F. Setback requirements for graywater systems shall meet the requirements of 20.7.3.302 NMAC except for the following:

(1) property lines, two (2) feet for disposal area;

(2) building or structure, two (2) feet for disposal area; and

(3) building or structure, zero (0) feet for above ground tanks.

G. A treatment unit shall be required for all graywater systems. If a tank is utilized as the treatment unit:

(1) the tank may be a single compartment;

(2) the tank shall be sized to accommodate one day design flow; and

(3) access to the tank shall be provided by a tamper resistant lid installed at grade.

Graywater should be utilized within twenty-four (24) hours of collection unless additional treatment is provided.

H. Tanks installed below ground shall meet the requirements of 20.7.3.501-502 NMAC except for the requirements stated in Paragraph G of this section. Tanks shall be protected against possible floatation.

I. Above ground tanks shall be constructed of solid durable materials, not subject to corrosion or decay and shall be approved by the department. Above ground tanks shall be set on a three inch (3") minimum concrete pad. Metal tanks shall not be authorized.

J. All tanks shall have an overflow drain with a permanent connection to the building drain or building sewer. The tank shall be protected against sewer line backflow by a backwater valve.

K. Each tank shall be vented as required by chapter 9 of the uniform plumbing code.

L. Each tank shall have its rated liquid capacity permanently marked on the unit. In addition, a sign "GRAYWATER SYSTEM, DANGER – UNSAFE WATER" shall be permanently marked on the tank.

M. The disposal system shall be constructed in accordance with 20.7.3.805 NMAC.

N. The graywater system shall have no direct or indirect cross connections with potable water systems.

O. Graywater use for purposes other than irrigation or toilet flushing is prohibited. Irrigation of edible food crops is prohibited.

[20.7.3.811 NMAC - N, 9/1/05]

20.7.3.812 PUMP STATIONS AND EQUIPMENT:

A. Pump stations or pump chambers shall be watertight and shall be constructed of concrete, plastic, fiberglass or other approved material. Tanks and chambers shall be designed and constructed so as to serve their intended purpose and appropriately coated to resist corrosion.

B. All valves, motors, pumps, aerators and other mechanical or electrical devices shall be located where they will be accessible for inspection and repair at all times and protected with a locking removable cover.

C. Pump stations or pump chambers shall be equipped with both audi-

ble and visual alarms, or remote and visual alarms, for high water and pump failure. All alarm and control circuits shall be on a separate circuit from pumps and shall be contained in weather-proof control boxes or located inside a building or other weather proof structure. Alarms shall be placed in a conspicuous location approved by the department.

[20.7.3.812 - Rp 20.7.3.402 NMAC, 9/1/05]

20.7.3.813 BUILDING SEWER:

A. The building sewer connects the building drain to the septic tank or liquid waste treatment unit. Horizontal building sewer piping shall be run in practical alignment and a uniform slope of not less than one-fourth (1/4) of an inch per foot or two percent (2%) toward the point of disposal provided that where it is impractical due to the structural features or arrangement of any building or structure to obtain a slope of one-fourth (1/4) of an inch or two percent (2%), any such pipe or piping four (4) inches in diameter or larger may have a slope of not less than one-eighth (1/8) of an inch per foot or one percent (1%), when first approved by the department.

B. Each horizontal sewer pipe shall be provided with a cleanout at its upper terminal and each run of pipe that is more than one hundred (100) feet in length shall be provided with a cleanout for each one hundred (100) feet or fraction thereof. Cleanouts shall be installed pursuant to the uniform plumbing code (UPC).

C. Sewer piping shall be an approved material having a smooth uniform bore. Vitrified clay pipe or fittings shall not be used above ground or where pressurized by a pump or ejector. Vitrified clay pipe or fittings shall be a minimum of twelve (12) inches below ground.

[20.7.3.813 - Rp, 20.7.3.402 NMAC, 9/1/05]

20.7.3.814 through 20.7.3.900

[RESERVED]

20.7.3.901 MONITORING:

A. As a condition to any permit, the owner of a on-site liquid wastes system shall permit department personnel right of entry to the property at reasonable times to allow for effluent sampling or evaluating the general state of repair or function of the system.

B. On-site liquid waste systems that require secondary treatment levels be achieved shall be sampled and analyzed only for 5-day BOD quarterly for the first year, semi-annually for the second year, and yearly thereafter or as otherwise required by the department to meet the requirements of the permit. Chemical oxy-

gen demand (COD) may be substituted for BOD5 with an acceptable calibration curve as approved by the department.

C. On-site liquid waste systems that require tertiary treatment levels be achieved shall be sampled and analyzed only for total nitrogen quarterly for the first year, semi-annually for the second year, and yearly thereafter or as otherwise required by the department to meet the requirements of the permit.

D. Advanced systems requiring disinfection shall be sampled and analyzed for fecal coliform quarterly for the first year, semi-annually for the second year, and yearly thereafter or as otherwise required by the department. In addition:

(1) when chlorine is used for disinfection, the total chlorine residual, at all times, shall be equal to or greater than 1.0 mg/l after thirty (30) minutes detention time at peak flows; and

(2) alternative disinfection methods, such as ultraviolet light, ozone or other methods, may be utilized after department approval.

E. All sampling and analysis shall be performed by certified personnel in accordance with the most current edition of *standard methods for the examination of water and wastewater* or other methods, including field instruments, approved by the department.

F. Sampling shall occur between the hours of 7:00 am and 7:00 pm.

G. Monitoring reports shall be submitted to the local field office within thirty (30) days of the required sampling event.

H. All test results exceeding the permit limits shall be reported to the local field office within five (5) working days.

I. Sampling frequency shall be quarterly for the first year, semi-annually for the second year, and yearly thereafter, unless otherwise specified in the permit.

J. If any two consecutive samples exceed the single sample limit, the system design and operation shall be evaluated by a professional engineer or a maintenance service provider for conformance with permitting conditions and shall be adjusted to bring the effluent quality into compliance.

K. If the 6-sample rolling average exceeds the treatment standards specified in 20.7.3.602 and 603 NMAC, the treatment system shall be subject to review and re-evaluation with regard to operation and maintenance. A department approved contingency plan, including more training for the maintenance service provider or replacement with a more experienced operator, may be implemented.

L. The following shall be considered as violations of the monitoring requirements of the permit.

(1) Failure to collect, analyze and report sampling results.

(2) The submission, by the owner or maintenance entity of an advanced treatment system or agent or employee thereof, of misleading or inaccurate information to the department, through neglect.

(3) The submission of fraudulent data including the following:

(a) apparent measurement results for which no measurement or test results were actually made as determined by the absence of the supporting records that are usually made;

(b) measurements or test results obtained by deliberately and knowingly making measurements or collecting samples at places and times other than as specified in the permit or 20.7.3 NMAC; and

(c) test results obtained through use of unapproved and erroneous sampling, preservation, storage or analysis procedures.

[20.7.3.901 NMAC - N, 9/1/05]

20.7.3.902 OPERATION AND MAINTENANCE REQUIREMENTS AND INSPECTION REQUIREMENTS AT TIME OF TRANSFER:

A. The owner of an on-site liquid waste system, including systems existing prior to the effective date of this regulation, shall be responsible for properly operating and maintaining the system in accordance with the recommendations of the manufacturer or designer of the system.

B. The owner of an advanced treatment system installed after the effective date of this regulation shall enter into a department approved maintenance contract with a maintenance service provider that will assure maintenance of the system in accordance with the recommendations of the manufacturer or designer of the system. A maintenance contract shall be in effect at all times.

C. Household hazardous waste and high strength waste shall not be introduced into the system.

D. Any spillage that may occur during tank pumpout shall be cleaned up immediately and the spill area disinfected with a sodium or calcium hypochloride solution.

E. Prior to the transfer of a property with an existing on-site liquid waste system, the current system owner shall have the system inspected and evaluated by an inspector.

(1) For conventional systems:

(a) the sludge and scum levels shall be determined and the septic tank pumped as needed;

(b) the effluent filters shall be

cleaned and replaced if damaged or not found in place; and

(c) the disposal area shall be visually evaluated for proper operation.

(2) For advanced treatment systems:

(a) the sludge and scum levels in the primary tank shall be determined and the tank pumped as needed;

(b) the effluent filters shall be cleaned and replaced if damaged or not found in place if a filter is applicable to the system;

(c) the disposal area shall be visually evaluated for proper operation; and

(d) an amendment of permit reflecting ownership change is required pursuant to Subsection E of 20.7.3.403 NMAC.

(3) Inspections shall be recorded on forms approved by the department. Inspection reports shall be kept on file by the inspector of the on-site liquid waste system. Inspectors shall submit to the department copies of all inspection reports, whether completed or not, within 15 days of the inspection. Corrective actions required pursuant to the inspection report shall be completed within 15 additional days. In addition, all inspection reports shall include the global positioning system (GPS) coordinates of the tank. Once an inspection is requested, all results, whether complete or not, shall be submitted to the department.

F. In the event of a failed system, that includes, but is not limited to disposal fields, the owner shall remedy the failed system with department approval.

[20.7.3.902 NMAC - N, 9/1/05]

20.7.3.903 MAINTENANCE SERVICE PROVIDERS (MSP) FOR CONVENTIONAL AND ADVANCED ON-SITE LIQUID WASTE SYSTEMS:

A. Maintenance service providers (MSP) shall at a minimum:

(1) obtain certification by the national association of waste transporters (NAWT) or equivalent;

(2) inspect, operate and maintain the system in accordance with the manufacturer's specification; and

(3) submit pumping and inspection records upon request to the department.

B. The MSP personnel shall be certified by the manufacturer for the proprietary unit being maintained.

C. The MSP personnel shall be trained in the proper operation and maintenance of the system.

D. The MSP personnel shall have the ability to sample the unit in accordance with approved sampling methods under this part.

E. The MSP shall have in place a standardized quality assurance/quality control (QA/QC) plan.

F. The MSP shall be able to respond to emergency situations within forty-eight (48) hours of being notified.

G. A public MSP shall adopt an ordinance, bylaw or rule, as appropriate, approved by the department, detailing the terms and conditions of service.

H. A private MSP shall use a contract for service that contains, at least, minimum standards approved by the department.

I. The MSP shall meet minimum requirements, as promulgated by the department, for effective operation, such as:

(1) reasonable response time;

(2) appropriate equipment;

(3) parts inventory;

(4) quality assurance/quality control plan; and

(5) insurance.

J. The MSP shall notify the department of any failed system.

[20.7.3.903 NMAC - N, 9/1/05]

20.7.3.904 REQUIREMENTS FOR CERTIFICATION:

A. The department will develop a certification program by July 1, 2007 that addresses the specifications below and as provided by law. After July 1, 2007:

(1) any person offering services pertaining to an on-site liquid waste system, including site evaluator, system designer, installer, wastewater reuse irrigator, inspector, maintenance service provider or septic pumper, shall be certified after completing a program and passing an exam approved by the department;

(2) employees of the department reviewing, approving or inspecting on-site liquid waste systems shall be certified as department liquid waste specialist after completing a program and passing an exam approved by the department; and

(3) a homeowner shall complete a program and pass an exam approved by the department prior to the issuance of a permit for a homeowner installed system.

B. General requirements for certifications of persons involved in the liquid waste program are specified below.

(1) Site evaluators shall demonstrate competence in soil evaluation to determine acceptable liquid waste disposal application rates and identify potential areas of concern, such as fractured bedrock, shallow ground water and karst terrain.

(2) Liquid waste system designers that configure conventional treatment systems and approved proprietary advanced systems shall demonstrate competence in configuration of on-site liquid waste systems, certification by the manufacturer of approved systems proposed and a basic understanding of the treatment and disposal

process.

(3) Installers shall possess a valid, applicable New Mexico contractor's license and demonstrate competence in the installation of on-site liquid waste systems.

(a) An installer 1 shall demonstrate competence in the installation of conventional treatment and disposal systems and holding tanks.

(b) An installer 2 shall demonstrate competence in all forms of on-site liquid waste systems. An installer 2 must have at least 3 years of installation experience, 30 hours of approved coursework and certified by the manufacturer of approved systems they install.

(4) Wastewater reuse irrigation service providers shall possess a valid, applicable New Mexico contractor's license and demonstrate competence in the configuration, installation, operation and maintenance of wastewater irrigation systems and the protection of public health.

(5) Inspectors shall demonstrate competence in the inspection of on-site liquid waste systems. Certification by the national association of waste transporters (NAWT), NSF international or a department-approved program is demonstration of competence in the inspection of conventional treatment and disposal systems.

(6) Maintenance service providers (MSP) shall demonstrate competence in the operation and maintenance of on-site liquid waste systems. Persons providing service shall follow department procedures for MSP and shall be certified by the manufacturer of the systems they operate and maintain.

(7) Septage pumpers shall demonstrate familiarity with applicable regulations and demonstrate competence in locating and exposing septic tanks, measuring septic tank sludge and scum levels, the complete pumping of septic tank sludge, maintenance of pumping equipment in a sanitary condition, prevention of pathogen transmission and preparation of an appropriate safety plan for normal operations.

(8) Manufacturers of approved advanced treatment systems shall provide training and certification for their systems at least once per year. Manufacturers may charge reasonable fees for their training and certification.

C. Limitations on scope of services.

(1) Liquid waste system designers may only configure conventional treatment systems, approved proprietary advanced treatment systems and conventional, proprietary and alternative disposal systems described in 20.7.3 NMAC.

(2) Installer 1 may only install conventional treatment systems and conventional disposal systems that do not

involve dosing or other mechanical distribution systems.

(3) Installer 2 may install all forms of on-site liquid waste systems.

D. Expiration and renewal of certifications and establishment of fees.

(1) Certifications are valid for a period up to three (3) years and shall expire on December 31 of the third year of issuance.

(2) Renewal of certifications require completion of at least 8 hours of continuing education units per year approved by the department.

(3) The department shall establish fees for the initial application and renewal of certifications.

E. Suspension, revocation and denials.

(1) The department may suspend or revoke a certification for cause. Failure to provide service in accordance with the certification shall be grounds for revocation of the certification.

(2) The department may deny certification if it determines that an applicant does not meet all requirements of this part or has violated any provision of these regulations.

F. Education steering committee. The secretary shall appoint an education steering committee. The committee shall consist of at least one representative of each classification for which certification is required and one department appointed member. The committee shall meet monthly until sufficient classes for all categories of certification are approved. Thereafter the committee shall meet semi-annually or as required for the purpose of certification reviews of sponsors, courses and instructors and shall make recommendations to the secretary as to findings.

G. Approval of sponsors.

(1) All sponsors wishing to offer department-approved courses for credit must be approved by the secretary prior to accepting students.

(2) Educational institutions, proprietary schools, professional organizations, internet-based training providers or businesses wishing to become department-approved sponsors must submit an application for department approval.

(3) The department shall maintain a list of approved sponsors.

(4) An approved sponsor shall comply with the following requirements.

(a) Conduct all courses in accordance with department rules and regulations and education policies.

(b) Permit the department or its representative access to classes being conducted and make available to the department, upon request, all information pertaining to the activities of the sponsor.

(c) Advertise at all times in a manner free from misrepresentation, deception or fraud.

(d) Prominently display the current certificate of sponsorship in the main office of the sponsor as registered with the department.

(e) In the event a sponsor ceases operations while students are enrolled who have not completed their program of study, submit 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.

(f) Maintain current, complete and accurate student records and instructor critiques or summaries, which shall be accessible at all times to the department or its authorized representatives. 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.

(g) Conduct all courses in accordance with course content requirements approved by the department.

(h) Certify no student as successfully completing a pre-certification course unless the student has attended at least 75% of the classroom instruction and has passed the course.

(i) Certify no certificate holder as successfully completing approved certification or continuing education course unless they have attended at least 90% of the classroom instruction.

(j) Advise the department of change of address and telephone number.

(k) Reapply for sponsorship in event of change of majority ownership.

(l) Notify the department in writing of change of directorship.

(m) Renew sponsorship approval every three (3) years.

(5) Failure to comply with this rule may result in the loss of sponsor approval.

H. Approval of courses.

(1) All pre-certification and continuing education courses shall be approved by the secretary.

(2) All courses shall be offered in accordance with established department course content requirements.

(3) All approved courses are subject to periodic review by the department.

I. Approval of instructors.

(1) All instructors shall be approved by the secretary.

(2) All instructor candidates shall complete an application for department review.

(3) All instructor candidates must be prepared to make a minimum fifteen (15) minute presentation to the education steer-

ing committee.

(4) An approved instructor shall comply with the following requirements:

(a) conduct all classes in accordance with department rules and regulations and education policies;

(b) insure that all instruction is free from misrepresentation;

(c) instruct in accordance with department-approved course content requirements;

(d) allow access to any class to any duly appointed representative of the department;

(e) renew approval biannually as prescribed by the department; instructor approval expires on December 31 of each even numbered year;

(f) certify to the sponsor a true and correct record of student attendance; and

(g) failure to comply with this section may result in the loss of instructor approval.

[20.7.3.904 NMAC - N, 9/1/05]

20.7.3.905 TECHNICAL ADVISORY COMMITTEE: Technical product review and approval shall be in accordance with 9-7A-15 NMSA 1978.

[20.7.3.905 NMAC - Rp, 20.7.3.8 NMAC, 9/1/05]

20.7.3.906 ADMINISTRATIVE ENFORCEMENT:

A. Any violation of these regulations is a petty misdemeanor subject to criminal penalties as authorized by NMSA 74-1-10.

B. The department may appear and prosecute any misdemeanor proceeding if the appearance is by an employee authorized by the secretary to institute or cause to be instituted an action on behalf of the department.

C. The secretary, at his discretion, may elect to pursue criminal or civil penalties, or both, for any violations of these regulations.

D. Upon any violation of these regulations, the department may:

(1) issue a compliance order stating the nature of the violation requiring compliance immediately or within a specific time period and assess a civil penalty for any past or current violation or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

E. Any penalty assessed in the compliance order for residential on-site liquid waste systems shall not exceed one hundred dollars (\$100) for each violation.

F. Any penalty assessed in the compliance order for non-residential on-site liquid waste systems shall not exceed one thousand dollars (\$1000) for each vio-

lation.

G. If a violator fails to achieve compliance within the time specified in the compliance order, the secretary shall assess civil penalties of not more than one thousand dollars (\$1000) for each non-compliance with the order.

H. A compliance order issued pursuant to this section shall become final unless, no later than thirty (30) days after the compliance order is served, the party named in the order submits a written request to the secretary for a hearing.

I. All requests for hearings shall be in accordance with 20.7.3.406 NMAC.

J. Penalties collected pursuant to violations of 20.7.3 NMAC shall be deposited in the state treasury to be credited to the general fund.

K. Any noncompliance with any provision of 20.7.3 NMAC or any permit provision may be subject to penalties.

[20.7.3.906 NMAC - N, 9/1/05]

20.7.3.907 AUTHORITY TO DISCONNECT SOURCE OF WATER SUPPLY:

The department may disconnect the source of water supply to a commercial or residential unit that is served by any on-site liquid waste system that has become a failed system and that presents an imminent hazard to public health. This authority includes authority to disconnect power utilities if necessary to disconnect the source of water supply. The department shall give notice of its actions to the unit owner and the tenants affected or as otherwise provided by the law.

[20.7.3.907 NMAC - Rp, 20.7.3.8 NMAC, 9/1/05]

20.7.3.908 through 20.7.3.1000
[RESERVED]

20.7.3.1001 CONSTRUCTION: 20.7.3 NMAC shall be liberally construed to carry out its purpose.

[20.7.3.1001 NMAC - Rp, 20.7.3.501 NMAC, 9/1/05]

20.7.3.1002 TEMPORARY PROVISIONS: All registration certificates, permits, orders, rulings and variances issued pursuant to the regulations in effect at the time such registration certificates, permits, orders, rulings, or variances were issued shall remain in full force and effect until repealed, replaced, superseded or amended pursuant to 20.7.3 NMAC.

[20.7.3.1002 NMAC - Rp, 20.7.3.502 NMAC, 9/1/05]

20.7.3.1003 SEVERABILITY: If any provision or application of 20.7.3 NMAC is held invalid, the remainder, or its

application to other situations or persons, shall not be affected.

[20.7.3.1003 NMAC - Rp, 20.7.3.503 NMAC, 9/1/05]

20.7.3.1004 REFERENCES IN OTHER REGULATIONS: Any reference to the liquid waste treatment and disposal regulations in any other rule shall be construed as a reference to 20.7.3 NMAC.

[20.7.3.1004 NMAC - Rp, 20.7.3.504 NMAC, 9/1/05]

20.7.3.1005 SAVINGS CLAUSE: Repeal or supersession of prior versions of the liquid waste disposal regulations shall not affect any administrative or judicial action for the enforcement thereof.

[20.7.3.1005 NMAC - Rp, 20.7.3.505 NMAC, 9/1/05]

20.7.3.1006 COLLATERAL REQUIREMENTS: Compliance with 20.7.3 NMAC does not relieve any person from the responsibility of meeting more stringent city or county regulations or ordinances or other requirements of state or federal laws governing the treatment or disposal of liquid waste.

[20.7.3.1006 NMAC - Rp, 20.7.3.506 NMAC, 9/1/05]

20.7.3.1007 LIMITATIONS OF DEFENSE: The existence of a valid permit for installation or modification of an on-site liquid waste system shall not constitute a defense to a violation of any section of 20.7.3 NMAC except the requirement for obtaining a permit (20.7.3.401-404 NMAC).

[20.7.3.1007 NMAC - Rp, 20.7.3.507 NMAC, 9/1/05]

20.7.3.1008 to 20.7.3.1100
[RESERVED]

HISTORY OF 20.7.3 NMAC:

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

EIB 73-4, Liquid Waste Disposal Regulations, filed 9/19/73.

EIB 79-7-2, Liquid Waste Disposal Regulations, filed 8/7/79.

EIB/LWDR 1, Liquid Waste Disposal Regulations, filed 10/10/85.

EIB/LWDR 2, Liquid Waste Disposal Regulations, filed 12/19/89.

History of Repealed Material: 20 NMAC 7.3, Liquid Waste Disposal (filed 10-27-95) repealed 11-30-95.

20.7.3 NMAC, Liquid Waste Disposal (filed 1/09/04) repealed 9/1/05.

Other History:

EIB/LWDR 2, Liquid Waste Disposal Regulations (filed 12/19/89) renumbered, reformatted and replaced by 20 NMAC 7.3, Liquid Waste Disposal, effective 11/30/95. 20 NMAC 7.3, Liquid Waste Disposal (filed 10/27/95) replaced by 20 NMAC 7.3, Liquid Waste Disposal, effective 10/15/97. 20 NMAC 7.3, Liquid Waste Disposal (filed 10/27/97) renumbered, reformatted, amended and replaced by 20.7.3 NMAC, Liquid Waste Disposal, effective 3/01/04. 20.7.3 NMAC, Liquid Waste Disposal (filed 1/09/04) replaced by 20.7.3 NMAC, Liquid Waste Disposal and Treatment, effective 9/1/05.

**NEW MEXICO
DEPARTMENT OF
FINANCE AND
ADMINISTRATION
LOCAL GOVERNMENT DIVISION**

This is an amendment to 2.110.2.11 and 2.110.2.17 NMAC, effective August 15, 2005.

2.110.2.11 ELIGIBLE ACTIVITIES/CATEGORIES

A. Applicants may apply for funding assistance under the following categories:

- (1) community infrastructure;
- (2) housing;
- (3) public facility capital outlay;
- (4) economic development;
- (5) emergency;
- (6) colonias;
- (7) planning.

B. Eligible activities under each of the categories are listed below.

C. Community infrastructure: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition
- (2) construction and/or rehabilitation of the following:
 - (a) water systems;
 - (b) sewer systems;
 - (c) municipal utilities;
 - (d) roads;
 - (e) streets;
 - (f) highways;
 - (g) curbs;
 - (h) gutters;
 - (i) sidewalks;
 - (j) storm sewers;
 - (k) street lighting;
 - (l) traffic control devices;
 - (m) parking facilities;
 - (n) solid waste disposal facilities.

D. Housing: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition;
- (2) rehabilitation;

- (3) clearance;
- (4) demolition and removal of privately-owned or acquired property for use or resale in the provision of assisted housing;

- (5) provision of public facilities to increase housing opportunities;

- (6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs;

- (7) certain types of housing modernization;

- (8) temporary relocation assistance;

- (9) code enforcement;

- (10) historic preservation activities;

- (11) an average of \$30,000 in CDBG funds per home can be used on home rehabilitation/repair activities.

E. Public facility capital outlay: Eligible activities may include, but are not limited to, such items as:

- (1) real property acquisition;
- (2) construction or improvement of community centers;
- (3) senior citizen centers;
- (4) nonresidential centers for the handicapped such as sheltered workshops;
- (5) other community facilities designed to provide health, social, recreational or similar community services for residents.

F. Economic development: The economic development category is established to assist communities in the promotion of economic development and is described in detail in Section 26.

G. Emergency: The emergency fund provides funding for emergency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.

- (1) Applications under this category will be accepted throughout the year.
- (2) An appropriate state agency must concur and provide written verification and adequate documentation with the applicant's assessment of the life threatening situation and the need for the emergency project.

- (3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

H. Planning: In addition to municipalities and counties, water associations, including water and sanitation districts, as defined in Section 2.110.2.7, Subsection L; are eligible to apply directly for planning grants only. ~~[Water associations are not subject to the comprehensive plan standard and may apply for development of other eligible planning studies.]~~

Grant assistance from the CDBG program must be used for a comprehensive plan, if a community or county does not have a current comprehensive plan (adopted or updated within the last five years) that includes at a minimum the following ~~[seven elements]:~~

- ~~(1) elements:~~
 - ~~[(1)] (a) land use;~~
 - ~~[(2)] (b) housing;~~
 - ~~[(3)] (c) transportation;~~
 - ~~[(4)] (d) infrastructure;~~
 - ~~[(5)] (e) economic development;~~

~~[and]~~

- ~~[(7)] (f) water;~~
- ~~[(g) hazards; and~~
- ~~[(6)] (h) implementation, a compilation of programs and specific actions to be completed in a stated sequence;~~

- ~~[(9)] (2) development of additional elements of a comprehensive plan may include but are not limited to:~~

- ~~(a) drainage;~~
- ~~(b) parks, recreation and open space;~~
- ~~(c) tourism;~~
- ~~(d) growth management;~~
- ~~(e) fiscal impact analysis;~~
- ~~(f) intergovernmental cooperation;~~
- ~~(g) social services;~~
- ~~(h) historic preservation.~~

- ~~[(9)] (3) if the entity has a current comprehensive plan, it may apply for funding assistance for any of the following:~~

- ~~[(10)] (4) data gathering analysis and special studies;~~

- ~~[(11)] (5) base mapping, aerial photography, geographic information systems, or global positioning satellite studies;~~

- ~~[(12)] (6) improvement of infrastructure capital improvement plans and individual project plans;~~

- ~~[(13)] (7) development of codes and ordinances, to further refine the implementation of the comprehensive plan;~~

- ~~[(14)] (8) other functional or comprehensive planning activities;~~

- ~~[(15)] (9) related citizen participation or strategic planning processes;~~

- ~~[(16)] (10) applicants may apply for funding assistance throughout the year as long as funds are available;~~

- ~~[(17)] (11) preliminary engineering reports will follow the USDA/RUS guidelines.~~

I. Colonias:

- (1) The colonias category is established in the amount of 10% of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions which qualify communities for designation to be carried out in areas along the U.S. - Mexican border.

- (2) Eligible applicants for the colonias setaside are municipalities and counties located within 150 miles of the

U.S.- Mexico border.

(3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

(a) lack of potable water supply;
(b) lack of adequate sewage systems;

(c) lack of decent, safe and sanitary housing;

(d) must have been in existence as a colonia prior to November, 1990.

(4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.

[2.110.2.11 NMAC - Rp 2 NMAC 110.2.11, 08-30-01; A, 08-13-04; A, 08-15-05]

2.110.2.17 APPLICATION REQUIREMENTS

A. Number of applications - All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing, ~~or~~ public facility capital outlay, or colonias categories.

(1) Planning applicants may submit an additional application for funding.

(2) Requests for assistance from eligible applicants in the economic development, emergency and planning categories can be submitted at any time, subject to funding availability.

(3) Counties may submit multiple applications for planning grants for water associations.

B. Single purpose application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

C. Joint applications -Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(2) However, other parties to the joint application may submit another application.

(3) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

(4) It should be noted that satisfying the required criteria, which is available from the division upon request, may take a significant period of time.

D. Applications limit - Applications are limited to the amount of funding necessary to complete a basic, meaningful and targeted project within a 24

month period.

(1) Applications may not exceed \$500,000 and planning applications may not exceed \$50,000.

(2) If, after conducting the required public hearing, an applicant determines that the previous year's CDBG application is still a priority, the applicant may ask the council to reconsider the previous year's application.

(3) The applicant need only submit a current year's resolution, updated project budget and schedule and any other information required by division staff.

E. Threshold requirements - To encourage timely completion of projects and to maximize participation the following threshold requirements ~~[must be met by]~~ shall be met prior to the application deadline.

(1) All projects for the eligible activities in the categories listed in Subsections C, D, E, and I of 2.110.2.11 NMAC must be completed at the time of application. (certificate of occupancy and/or certification of operation must be in place).

(2) Audit and monitoring findings, especially in general program administration for CDBG projects, must be resolved.

(3) The following setaside categories are exempt from threshold requirement: planning, economic development, and emergency.

F. Matching requirements - In order to assist the council in making funding resources go further and to ensure there is a local investment in applications submitted to the council for funding consideration, the following will be required.

(1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) Consistent with Section 26 of these regulations, all applications in the economic development category must provide at least two private dollars for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget;

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

G. Matching loan fund - In order to assist communities who do not have the resources to comply with the matching requirement for their project, a matching fund is available to provide money at appropriate interest rates.

(1) The council will use NMCA reversions as a funding source for the loan fund.

(2) Payment schedules will be developed by the division with appropriate payment amounts and due dates.

H. Other funding commitments - If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding agency must be submitted with the application.

I. Water conservation and drought commitments - In order to make the state's water supplies go further and to ensure proper levels of preparations are taken locally for periodic droughts, the following is encouraged:

(1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.

(2) Applicants develop, adopt and submit to the state engineer a drought management plan.

(3) The ordinance and plan shall be accompanied by a program for its implementation;

(a) in developing a water conservation ordinance pursuant to this section: applicants shall adopt ordinances and codes to encourage water conservation measures; they shall identify and implement best management practices in their operations to improve conservation of the resources; and

(b) applicants shall consider and incorporate into its plan if appropriate, at least the following:

(i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(ii) low-water-use landscaping and efficient irrigation;

(iii) water-efficient commercial and industrial water-use processes;

(iv) water reuse systems for both potable and non-potable water;

(v) distribution system leak repair;

(vi) dissemination of information regarding water-use efficiency measures, including public education pro-

grams and demonstrations of water-saving techniques;

(vii) water rate structures designed to encourage water-use efficiency and reuse in a fiscally responsible manner; and

(viii) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

(c) the council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

[2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04; A, 08-15-05]

NEW MEXICO BOARD OF EXAMINERS FOR OCCUPATIONAL THERAPY

This is an amendment to 16.15.2 NMAC, Sections 9, 14, and the addition of a new section, Section 16, effective 08-29-05.

16.15.2.9 INITIAL APPLICATION FOR LICENSURE:

A. An application packet may be obtained from the state licensure board office.

B. The application must be submitted on completed forms as supplied by the board.

C. A photograph of the applicant taken within six months prior to filing application must be submitted with the application. (Passport size recommended; scanned or computer-generated photographs must be printed on photo quality paper.)

D. Application fees in the form of a check or money order must be submitted in full with the application. Personal checks may delay processing of your application for up to ten (10) days.

E. Verification of registration or certification may be provided in any of the following ways.

(1) Written verification must be received by the board directly from the national board for certification in occupational therapy (NBCOT) certifying that the applicant's certification is active and in good standing.

(2) [Provide the Board with verification of initial certification from] Written verification of initial certification must be received by the board directly from the national board for certification in occupational therapy (NBCOT) [or the American Occupational Therapy Certification Board (AOTCB)] and verification of licensure from each state in which the applicant has been licensed. Such proof of licensure must be received by the board directly from the

state boards where currently and previously licensed. For applicants who practiced in states that do not require licensure, verification of employment shall be received by the board office directly from the applicant's previous employers on a verification of employment form to be provided by the board.

F. An occupational therapy assistant (OTA), shall file with the board a signed, current statement of supervision by the occupational therapist (OT) who will be responsible for the supervision of the occupational therapy assistant (OTA). Both the supervisor and supervisee carry responsibility for notifying the board within ten (10) work days when there is a change of supervisor.

G. On-line applications will require a notarized signature card be filed with the board office.

H. All licenses are the property of the board and shall forthwith be returned to the board, if requested.

I. No license is valid without the official board seal.

J. Questions of felony convictions or misdemeanors involving moral turpitude have to be satisfactorily resolved. The board may require proof that the person has been sufficiently rehabilitated to warrant the public trust. Proof of sufficient rehabilitation may include, but not be limited to: certified proof of completion of probation or parole supervision, payment of fees, community service or any other court ordered sanction.

[06-14-97; 02-14-98; 16.15.2.9 NMAC - Rn, 16 NMAC 15.2.9, 06-29-00; A, 04-03-03; A, 08-29-05]

16.15.2.14 EXPIRED LICENSE OR NON-PRACTICE: [A license not renewed on the annual renewal date is expired.]

A. [The Board may reinstate a license upon receipt of the renewal application, renewal fee for each year the license has been expired, appropriate late fee and documentation of continuing education contact hours as required.] A license not renewed on the annual renewal date is expired.

B. Validation of competency for applicants who have not practiced since his or her graduation from an occupational therapy program, or who have not practiced as an occupational therapist or occupational therapy assistant for a period of more than three (3) years, full licensure requires the following:

(1) [Twenty (20) continuing education contact hours will be required for each year of expired licensure.] a completed application form as required under 16.15.2.9 NMAC;

(2) [After five (5) years of an

expired licensure, the applicant may be requested to take the NBCOT certification examination.] passage of the jurisprudence exam;

(3) [Alternative proof of competency may be considered on an individual basis by the Board. Options for alternative proof of competency may include, but are not limited to: AOTA self study course; university sponsored occupational therapy refresher course; supervised fieldwork as designated by the Board, not to exceed 12 weeks, and to be decided on a case by case basis; university courses (subject matter to be pre-approved by the Board); and continuing education (courses to be pre-approved by the Board).] twenty (20) continuing education contact hours for each year the applicant was not practicing as an occupational therapist or occupational therapy assistant (course work to be pre-approved by the board); and

(4) [Passage of the jurisprudence examination.] the board may require the applicant to provide or demonstrate additional evidence of his or her competency to practice (e.g. passage of the national board for certification in occupational therapy exam, AOTA courses, university sponsored courses, supervision or mentorship).

[06-14-97; 16.15.2.14 NMAC - Rn & A, 16 NMAC 15.2.14, 06-29-00; A, 04-03-03; A, 08-29-05]

16.15.2.16 REINSTATEMENT OF LICENSURE:

A. Reinstatement of a New Mexico occupational therapist or occupational therapy assistant license that has lapsed for less than one year requires the following:

(1) completion of the renewal form;

(2) payment of late fee;

(3) payment of the renewal fee;

(4) proof of the required continuing education contact hours; and

(5) passage of the jurisprudence examination.

B. Reinstatement of an occupational therapist or occupational therapy assistant license that has lapsed in New Mexico for more than one (1) year, where there is evidence of continued practice with an unrestricted license in another state requires the following:

(1) completion of the reinstatement application;

(2) payment of the reinstatement application;

(3) payment of the current year renewal fee;

(4) proof of twenty (20) continuing education hours for each year of the lapsed New Mexico license;

(5) passage of the jurisprudence examination; and

(6) verification of all current, valid unrestricted licenses from other U.S. jurisdictions; verifications may be received by the board via regular mail, electronic mail, or facsimile; verifications must be signed and dated by an official of the agency licensing the applicant and include the following data:

(a) name and address of the applicant;

(b) license number and date of issuance;

(c) current of the license;

(d) expiration date of the license;

(e) a statement of whether the applicant was denied a license by the agency;

(f) a statement of whether any disciplinary action is pending or has been taken against the applicant; and

(g) receipt of verification of employment.

[16.15.2.16 NMAC - N, 08-29-05]

NEW MEXICO BOARD OF EXAMINERS FOR OCCUPATIONAL THERAPY

This is an amendment to 16.15.3 NMAC, Section 7, and 9, effective 08-29-05.

16.15.3.7 DEFINITIONS:

A. "Supervision" means the typical oversight required for individuals at the various levels of role performance. Supervision is a shared responsibility. The supervising occupational therapist (OT) has a responsibility to provide supervision to occupational therapy assistants (OTAs), persons practicing on a provisional permit, and occupational therapy aides/technicians. The supervisee has a responsibility to obtain supervision.

B. [~~An "entry level occupational therapy assistant" (OTA) means a new graduate that has not passed the National Board for Certification in Occupational Therapy Exam.~~] "On-site supervision" means a minimum of daily direct contact at the site of work with the licensed supervisor physically present within the facility with the supervisee renders care.

C. "Entry-level occupational therapy assistant" (OTA) means a new graduate with less than 960 hours of experience who has passed the national board for certification in occupational therapy (NBCOT) examination, or is new to an area of practice or new to a facility. 960 hours begins on the date of employment with full (non-provisional) licensure. An occupational therapy assistant (OTA) shall also be considered entry-level when moving

to a new area of practice. In this case, the occupational therapy assistant (OTA) shall move to intermediate-level status after completing the facility's probationary period. An entry-level occupational therapy assistant (OTA) must demonstrate competency by meeting work performance evaluation criteria in a satisfactory manner.

D. "Intermediate-level occupational therapy assistant (OTA)" means an occupational therapy assistant (OTA) that has advanced to this level with up to three (3) years of experience, or a more experienced occupational therapy assistant (OTA) who has recently passed the probationary period in a new area of practice. An intermediate-level occupational therapy assistant (OTA) must demonstrate competency by meeting work performance evaluation criteria in a satisfactory manner.

E. "Advanced-level occupational therapy assistant (OTA)" means an occupational therapy assistant (OTA) with a minimum of three years experience in a particular area of practice. An advanced-level occupational therapy assistant (OTA) must demonstrate competency by meeting work performance evaluation criteria in a satisfactory manner.

F. "Twenty percent (20%) face-to-face clinical observation" means a minimum of every fifth (5th) contact or 1 out of every 5 shall be direct observation of treatment.

G. "Supervision contact" means any form of supervision that is of sufficient length of time to ethically provide guidance.

[06-14-97; 16.15.3.7 NMAC - Rn & A, 16 NMAC 15.3.7, 06-29-00; A, 04-03-03; A, 08-29-05]

16.15.3.9 FOUR LEVELS OF SUPERVISION FOR OTA'S ARE IDENTIFIED:

A. "Direct supervision" means a minimum of daily direct contact at the site of work with the licensed supervisor physically present within the facility when the supervisee renders care and requires the supervisor to co-sign all documentation that is completed by the supervisee. [~~In a work setting involving multiple sites of work and/or offices, supervision shall occur at one or more of the sites or offices, but not necessarily all sites or offices.~~] The occupational therapist (OT) or an intermediate-level or advanced-level occupational therapy assistant (OTA) shall provide direct supervision for persons practicing on a provisional permit pending certification as an occupational therapy assistant. The occupational therapist (OT) and the occupational therapy assistant (OTA) shall provide direct supervision to all occupational therapy aides/technicians.

B. "Close supervision"

means a minimum of daily communication by means of direct contact, telephone, fax, or e-mail. In a single work setting or when involving multiple sites, supervision shall occur at one or more of the sites or offices, but not necessarily at all sites or offices. At a minimum, twenty percent (20%) of close supervision contacts shall be face-to-face clinical observation. Required for entry-level occupational therapy assistants (OTA).

C. "Routine supervision" means a minimum of direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods such as telephone, fax or e-mail. At a minimum, twenty percent (20%) of routine contacts shall be face-to-face clinical observation. Required for intermediate-level occupational therapy assistants (OTA).

D. "General supervision" means a minimum of monthly direct contact, with supervision available as needed by other methods such as telephone, fax or e-mail. At a minimum, twenty percent (20%) of general contacts shall be face-to-face clinical observation. Required for advanced-level occupational therapy assistants (OTA).

[06-14-97; 16.15.3.9 NMAC - Rn & A, 16 NMAC 15.3.9, 06-29-00; A, 04-03-03; A, 08-29-05]

NEW MEXICO BOARD OF EXAMINERS FOR OCCUPATIONAL THERAPY

This is an amendment to 16.15.4 NMAC, Sections 8 & 9, effective 08-29-05.

16.15.4.8 ANNUAL CONTINUING EDUCATION REQUIREMENTS:

A. Every licensed occupational therapist and occupational therapy assistant must earn a minimum of twenty (20) continuing education contact hours per year during each year of licensure. Continuing education contact hours must be earned prior to license renewal the following year. The first year during which twenty (20) contact hours must be earned is the year beginning on October 1st following license issuance and ending on the following September 30th. Occupational therapists and occupational therapy assistants licensed during the first year will be expected to pay the annual renewal fee and may submit continuing education contact hours during this first year for carryover. A maximum of twenty (20) contact hours may be carried over.

B. No license will be renewed in the absence of satisfactory evidence that the required continuing education contact hours have been earned.

C. The board office will mail a renewal application to each licensee at least thirty (30) days prior to the expiration date of the license.

D. Each licensee is responsible for submitting the required renewal fee and continuing education by the expiration date whether or not a renewal application is received by the licensee.

E. Each licensee is responsible for filing address changes and maintaining a current address with the board office.

[06-14-97; 16.15.4.8 NMAC - Rn & A, 16 NMAC 15.4.8, 06-29-00; A, 04-03-03; A, 08-29-05]

16.15.4.9 APPROVAL OF CONTINUING EDUCATION:

A. No licensee may obtain credit for any continuing education contact hours without approval of those continuing education contact hours by the board.

B. Prior approval of continuing education contact hours may be obtained upon request by the licensee. Final determination of values and approval of continuing education contact hours will remain at the discretion of the board.

C. Continuing education contact hours may be earned in the following ways:

(1) **Attendance at a seminar, workshop or program;** applicants must provide all of the following:

(a) program agenda with number of contact hours;

(b) evidence that the program attended was sponsored by a component of the American occupational therapy association or some other sponsor approved by the board for continuing education credit;

(c) statement of the program's subject matter and/or stated objectives;

(d) statement indicating the instructor's background/expertise; and

(e) proof of actual program attendance; such proof shall be a certificate of completion signed by the presenter or program sponsor.

(2) **Preparation and/or presentation of aw workshop/in-service.** Credit may be given only once for preparation or presentation of the same workshop and the board will determine the number of continuing education contact hours approved. Applicant must provide proof of preparation and/or presentation. Proof of preparation may be an outline, copy of handouts, copy of overheads or transparencies, and a copy of the agenda showing name of licensee as presenter. Contact hours for the presenter will be calculated at three (3) times the number of hours of audience participation (e.g. a two hour workshop equals 6 hours for the presenter). A maximum of

twelve (12) contact hours per renewal year is allowed in this area.

(3) **Completion of university or college courses.** Applicant must provide the name of the course; number of credit hours; inclusive dates of attendance; ~~a final grade transcript;~~ completed transcript or grade report with a passing grade of "C" or better; name of instructor and institution; and a brief summary indicating the course's relationship to the licensee's present or future position in the field of occupational therapy. Non-credit community college courses may be accepted at the board's discretion. A maximum of twenty (20) contact hours is allowed for a three (3) credit course; a maximum of fifteen (15) contact hours is allowed for a two (2) credit course; and a maximum of ten (10) contact hours is allowed for a one (1) credit course.

(4) **Attendance at physician in-service programs or regular occupational therapy staff in-service programs.** The applicant must provide the name of the program; number of hours spent in the program; inclusive dates of attendance; name of the instructor or supervisor of the program; name of the institution; and a brief course summary indicating the course's relationship to the licensee's present or future position in the field of occupational therapy. A maximum of ten (10) contact hours will be allowed in this area.

(5) **Completion of an American occupational therapy association (AOTA) or other self-study course.** The applicant must provide:

(a) a copy of the certificate of completion received from the program provider; and

(b) a brief statement indicating the course's relationship to the licensee's present or future position in the field of occupational therapy.

(6) **Reading a book.** The applicant must provide the name of the book; number of pages; name of the author; and a typewritten summary explaining how the information obtained from the book applies to the licensee's present or future position in the field of occupational therapy. The board may approve, on an individual basis, up to two (2) contact hours for each book read. A maximum of four (4) contact hours will be allowed in this area.

(7) **Writing a book.** The applicant must provide a copy of the book written. The book will be returned to the licensee upon request.

(a) The book must have been copyrighted in the year for which the continuing education contact hours are requested.

(b) Up to forty (40) contact hours may be awarded at the board's discretion.

(8) **Viewing video**

tapes/films/prerecorded materials. An applicant must provide the name of the film, tape, or audio cassette; the length of time; name of the presenter; and a typewritten summary explaining how the information obtained applies to the licensee's present or future position in the field of occupational therapy. A maximum of ten (10) contact hours per year is allowed in this area.

(9) **Presentation of a paper.** The applicant must provide a copy of the paper along with the duration and location of the presentation. The presentation must have been made in the year for which the continuing education contact hours are requested. Credit may be given only once for any individual presentation and the board will determine the number of continuing education contact hours approved.

(10) **Publication of a paper.** The applicant must provide a copy of the published paper, which must have been published prior to license renewal. Publication must be in a recognized journal or publication. The board will determine the number of continuing education contact hours approved.

(11) **Conducting occupational therapy research.** The board will determine the number of continuing education contact hours approved. The applicant must provide the following:

(a) title and description of research project, including brief timeline;

(b) names of other persons involved in project (i.e., co-investigators or supervisors);

(c) a brief statement indicating how participation in the project is related to the licensee's present or future position in the field of occupational therapy;

(d) a brief statement indicating how participation in the project is benefiting the applicant's therapy skills or research skills; and

(e) provide a copy of the research report (if project has been completed); (if report is incomplete), credit will be allowed by providing the listed information or by receipt of the college transcript.

(12) **Specialty/certification programs.** Applicants wishing to receive continuing education for certification programs must submit a certificate of completion signed by the program sponsor. The board will determine the number of continuing education contact hours approved.

(13) **Supervising level II fieldwork.** Applicants should provide a copy of the student evaluation (cover and signature pages only). The student's name should be blacked out for confidentiality. A maximum of twelve (12) contact hours will be approved for each OT fieldwork II rotation of twelve (12) weeks. A maximum of eight (8) contact hours will be approved for each

OTA fieldwork II rotation of eight (8) weeks. A maximum of twelve (12) contact hours per renewal year is allowed in this area.

(14) **Mentoring.** Applies to an OT or OTA who has been practicing at least one year prior to entering a new area of practice only. Mentoring shall occur for a minimum of six months and no longer than one year. The mentor shall have at least one (1) year of experience in the specialty area of practice and not be the direct supervisor of the mentored therapist. The [~~“Supervision Log”~~] “mentoring log” should be used as proof of hours mentored. Both the mentor and mentored will be allowed up to a maximum of five (5) contact hours per year.

(15) **Alternative medicine seminars.** Applicants should include a statement indicating how the course relates to the licensee’s present or future position in the field of occupational therapy with their request. The board will approve contact hours for these courses on a case-by-case basis.

(16) **Internet courses.** Applicants should include a copy of the certificate of completion received from the program provider. A maximum of ten (10) contact hours per renewal is allowed in this area.

D. **Ineligible activities** include, but are not limited to:

(1) orientation and in-service programs dealing with organizational structures, processes, or procedures;

(2) meetings for purposes of policy making that do not include a continuing education component related to protection of the public; for continuing education component approval, contact hours are to be determined by the board; a maximum of ten (10) contact hours per renewal year is allowed in this area;

(3) association, chapter or district business meetings;

(4) entertainment or recreational meetings or activities;

(5) committee meetings, holding of offices, serving as an organizational delegate;

(6) visiting exhibits;

(7) any self-directed studies not approved by the board; and

(8) CPR education.

E. Credit screening procedures are as follows:

(1) the board or its designee must approve each request for continuing education credit;

(2) the licensee will be informed of the board’s action within thirty (30) calendar days of receipt of the request; and

(3) the licensee whose request has been denied may appeal to the board within thirty (30) calendar days of the notification of the board’s decision.

F. Continuing education audit.

(1) The board shall audit a percentage of renewal applications each year to verify the continuing education requirement.

(2) If a notice of audit letter is received with the annual renewal form, evidence of continuing education hours earned during the renewal year must be submitted to the board as requested and as required in the Occupational Therapy Act and by this rule.

(3) If the licensee is not audited, all documentation of attendance and agendas should be retained by the licensee for a minimum of three (3) years immediately preceding the current renewal.

(4) The board reserves the right to audit continuing education attendance certificates whenever there is reasonable doubt the courses submitted, dates, or hours may be incorrect.

(5) Proof of attendance for all continuing education programs is required on all renewal applications submitted after the expiration date.

G. Credit for excess continuing education contact hours accumulated may be used only during the following year. Documentation of excess continuing education contact hours which are being submitted for credit must be submitted with the annual renewal fee and application. The board will allow a maximum of twenty (20) continuing education contact hours to be carried over into the next licensing year. [06-14-97; 16.15.4.9 NMAC - Rn & A, 16 NMAC 15.4.9, 06-29-00; A, 04-03-03; A, 08-29-05]

NEW MEXICO BOARD OF EXAMINERS FOR OCCUPATIONAL THERAPY

This is an amendment to 16.15.6 NMAC, Section 8, effective 08-29-05.

16.15.6.8 SCHEDULE OF FEES: (note, these fees are nonrefundable.)

A. Application for full (non-provisional) Licensure received between September 1 and May 31:

(1) occupational therapist: [~~\$100.00~~] \$110.00

(2) occupational therapy assistant: \$100.00

B. applications for full (non-provisional) licensure received between June 1 and August 31st.: \$50.00

(1) occupational therapist: [~~\$50.00~~] \$60.00

(2) occupational therapy assistant: \$50.00

C. Provisional permit:

\$25.00

D. List of licensees:

\$50.00

E. Labels of addresses:

[~~\$75.00~~] \$80.00

F. Electronic data disk:

[~~\$75.00~~] \$80.00

G. Verification of licensure: \$20.00

H. Jurisprudence exam:

\$10.00

I. Annual renewal fees:

(1) occupational therapist:

[~~\$60.00~~] \$70.00

(2) occupational therapy assistant: [~~\$40.00~~] \$50.00

J. Duplicate of license (issued only in cases of loss or if licensee wishes name change due to divorce, marriage, etc.): [~~\$10.00~~] \$15.00

K. Penalty fee for renewals not postmarked by October 1st of the renewal year: \$100.00

L. Continuing education approval for course provider: \$25.00

M. Copy charges for public documents (per page): \$1.00

N. Inactive status fees:

(1) initial inactive status fee:

[~~\$10.00~~] \$15.00

(2) annual inactive status fee:

[~~\$10.00~~] \$15.00

(3) reactivation from inactive status fees:

(a) occupational therapist:

[~~\$60.00~~] \$70.00

(b) occupational therapy assistant:

[~~\$40.00~~] \$50.00

O. Returned check charge (per check): \$20.00

[6-14-97; 16.15.6.8 NMAC - Rn & A, 16 NMAC 15.6.8, 06-29-00; A, 04-03-03; A, 08-29-05]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 19 PUBLIC SCHOOL ACCOUNTABILITY

PART 6 TITLE I SUPPLEMENTAL EDUCATIONAL SERVICES

6.19.6.1 ISSUING AGENCY:

Public Education Department [6.19.6.1 NMAC - N, 08/15/05]

6.19.6.2 SCOPE:

This rule applies to all school districts, public schools, including charter schools, and all state-approved supplemental educational services providers who offer or plan to offer such services in New Mexico.

[6.19.6.2 NMAC - N, 08/15/05]

6.19.6.3 STATUTORY AUTHORITY: Sections 22-2-1, 22-2-2, 22-9-3, 22-9-15 NMSA 1978; 20 U.S. Code Section 6316; 34 Code of Federal Regulations Part 200.

[6.19.6.3 NMAC - N, 08/15/05]

6.19.6.4 DURATION: Permanent

[6.19.6.4 NMAC - N, 08/15/05]

6.19.6.5 EFFECTIVE DATE: August 15, 2005, unless a later date is cited at the end of a section.

[6.19.6.5 NMAC - N, 08/15/05]

6.19.6.6 OBJECTIVE: This rule establishes requirements for:

A. supplemental educational services providers who seek to use incentives as a method of promoting selection of their services by parents of eligible children;

B. allowable rewards to students to reward attendance, continued participation and achievement related to the supplemental educational services; and

C. establishing a timeline to be followed by supplemental educational services providers and all school districts and public schools, including charter schools for commencing and ending supplemental educational services during the school year.

[6.19.6.6 NMAC - N, 08/15/05]

6.19.6.7 DEFINITIONS:

A. "Department" means the public education department.

B. "Eligible child or eligible children" means a child or children from low income families as determined by a school district, public school, or charter school for the purposes of allocating federal funds made available under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as amended.

C. "Incentives" means any goods, facilities, services, gifts, coupons, discounts, rebates, or cash offered or given to anyone by or on behalf of a supplemental educational services provider to promote selection of their services by parents or guardians of eligible children.

D. "Rewards" means an acceptable classroom incentive with no redeemable monetary value to an eligible child or that child's parent or guardian and that is offered to an eligible child only as a reward for attendance, continued participation, or achievement related to a provider's services.

E. "Supplemental educa-

tional services" means tutoring and other supplemental academic enrichment services that are in addition to instruction provided during the school day and are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children on required academic assessments and attain proficiency in meeting the state's academic achievement standards.

F. "Timeline" means a schedule established by the department that delineates when parental notifications, are to be issued, when parent notifications are to be returned, when supplemental educational services may commence, and approximately how much supplemental educational service shall be completed prior to the state-mandated criterion referenced testing.

[6.19.6.7 NMAC - N, 08/15/05]

6.19.6.8 REQUIREMENTS.

A. All school districts, public schools, including charter schools and all state-approved supplemental educational services providers who offer or plan to offer supplemental educational services in New Mexico, shall adhere to timelines as follows.

(1) Parental notification shall occur two weeks after school has started.

(2) The enrollment period for supplemental educational services is at a minimum the four (4) week period subsequent to the beginning of a school year after the issuance of notification to parents of the availability of supplemental educational services.

(3) Supplemental educational services shall begin no later than four (4) weeks after the later of the following dates:

(a) the minimum enrollment period for supplemental educational services has ended; or

(b) the date the child has enrolled for supplemental educational services.

(4) Each supplemental educational services provider must complete at least seventy-five percent of services to eligible children for whom the parent/guardian has selected the supplemental educational service provider prior to the administration of the state-mandated criterion referenced testing.

B. Except for good cause shown in writing to the department, no school district, public school, including a charter school shall enter into agreements or otherwise permit supplemental educational services providers to operate during the mandatory state-mandated criterion referenced testing.

C. Beginning with the 2005-2006 school year and continuing in every school year thereafter, supplemental educational services providers shall not

directly or indirectly use incentives as a method of promoting selection of their services by parents or guardians of eligible children. Provided, however, that rewards may be offered to eligible children:

(1) to reward attendance, continued participation, or achievement related to a provider's services;

(2) if the reward has no redeemable monetary value to the eligible child or his parent/guardian and is otherwise consistent with accepted classroom incentives, such as pizza parties, ice cream parties, school supplies having nominal value, or the opportunity to order discounted instructional material for the eligible child's personal use; and

(3) parents or guardians of an eligible child or children consent to the offering of such incentives.

[6.19.6.8 NMAC - N, 08/15/05]

6.19.6.9 UNFAIR PRACTICES: Supplemental educational services funds are funds that have been provided by grant to the department. The department disburses these funds to school districts and charter schools for purposes of reimbursing providers for services performed pursuant to professional services contracts entered into with providers. For purposes of performing supplemental educational services and as a condition of receipt of these public funds, it shall constitute an unfair practice for providers to offer or provide any incentive other than those allowed by this rule.

A. School districts or charter school employees who learn that a supplementary educational services provider has offered to or actually provided an incentive other than those allowed by this rule, shall:

(1) promptly notify the provider in writing to cease and desist this practice immediately;

(2) promptly notify any parent or guardian that any incentive other than those allowed by this rule may not be offered by a provider and may not be accepted by the parent or guardian; and

(3) notify the department in writing if a provider fails or refuses to cease or desist in offering or providing non-allowed incentives.

B. The department upon receiving a written notification under this section or upon receiving a complaint from any other sources, may, after verifying such offering:

(1) notify the provider in writing to cease and desist this practice immediately because any incentive other than those allowed by this rule may not be offered by a provider nor accepted by the parent or guardian;

(2) notify parents or guardians

that any incentive other than those allowed by this rule may not be offered by a provider and may not be accepted by the parent or guardian;

(3) notify appropriate authorities of suspected conduct that may constitute soliciting or receiving illegal kickbacks in whole or in part with public money.
[6.19.6.9 NMAC - N, 08/15/05]

HISTORY OF 6.19.6 NMAC: [Reserved]

**NEW MEXICO PUBLIC
EDUCATION
DEPARTMENT**

**TITLE 6 PRIMARY AND
SECONDARY EDUCATION
CHAPTER 30 EDUCATIONAL
STANDARDS - GENERAL REQUIRE-
MENTS
PART 7 DUAL CREDIT**

6.30.7.1 ISSUING AGENCY:
Public Education Department
[6.30.7.1 NMAC - N, 08/15/05]

6.30.7.2 SCOPE: This rule applies to all public high schools, including charter schools.
[6.30.7.2 NMAC - N, 08/15/05]

**6.30.7.3 STATUTORY
AUTHORITY:** Section 22-2-1 NMSA 1978.
[6.30.7.3 NMAC - N, 08/15/05]

6.30.7.4 DURATION:
Permanent
[6.30.7.4 NMAC - N, 08/15/05]

6.30.7.5 EFFECTIVE DATE:
August 15, 2005, unless a later date is cited at the end of a section.
[6.30.7.5 NMAC - N, 08/15/05]

6.30.7.6 OBJECTIVE: The purposes of dual credit are: (i) to increase opportunities for high school students, and (ii) to increase efficient use of instructional staff, facilities, equipment, student support services and technical advisory committees at both the secondary and postsecondary levels; and thereby to increase the overall quality of instruction and learning available through secondary schools.
[6.30.7.6 NMAC - N, 08/15/05]

6.30.7.7 DEFINITIONS:
A. "Dual credit program" refers to a program that allows high school students to enroll in college courses in postsecondary institutions prior to high school graduation, giving them enrichment opportunities and first-hand experiences with the requirements of college level work. Dual

credit students receive both high school and college credit simultaneously.

pursuant to Article XII, Section 6 of the Constitution of New Mexico and the public education department act;

B. "Postsecondary institution" refers to a public postsecondary educational institution operating in the state, including a community college, branch community college, technical-vocational institute, learning center and four-year educational institution in the state.
[6.30.7.7 NMAC - N, 08/15/05]

6.30.7.8 IMPLEMENTATION:

A. Dual credit courses may be taken as elective high school credits.

B. Dual credit courses may satisfy high school core courses when the department standards and benchmarks are met as verified by the department, and curriculum is aligned to meet postsecondary requirements.

C. Final grades for all students must be delivered to the high school by the end of the high school semester and/or the date of high school graduation for all high schools.

D. Dual credit for both academic and career technical courses requires an executed dual credit agreement between the public school district and the postsecondary institution. The dual credit agreement must address the following components and must be signed by the public school district and the postsecondary institution.

(1) Name of school district.
(2) Name of postsecondary institution.

(3) What are your methods of qualifying students for dual credit courses?

(4) If placement tests are used as a qualifying method for enrollment in dual credit courses, which tests are utilized?

(5) How will all students and parents be informed about dual credit and how students can participate in dual credit?

(6) What kind of counseling is provided to help students/parents in deciding about participation in a dual credit program by the high school and the postsecondary institution?

(7) What are the applicable requirements for awarding of credit by the high school and postsecondary institution respectively?

(8) How will you demonstrate student awareness of academic requirements of the course?

(9) How will you demonstrate student awareness of the scheduling requirements of the course?

(10) What are the responsibilities of the student relative to successful partici-

pation and completion in a dual credit course/program?

(11) How will the secondary and postsecondary institution provide support services such as tutoring, career counseling/guidance, and special services?

(12) What is the schedule for the transfer of tuition and fees by the public school district to the postsecondary institution for dual credit students?

(13) How will the school district handle textbooks, supplies, etc., for dual credit students?

(14) How will the school district fund and schedule the transportation of students between secondary and postsecondary campuses in accordance with guidelines and definitions of the school transportation bureau?

(15) Who is liable for dual credit secondary students and their behavior while they are on the campus of the postsecondary institution for the purpose of attending class(es)?

(16) What are the approved courses for dual credit and are these courses part of an articulated program of study? If yes, does the student receive college credit for these courses?

(17) How will the postsecondary institution record dual credit(s) on student transcripts?

[6.30.7.8 NMAC - N, 08/15/05]

History of 6.30.7 NMAC: [Reserved]

**NEW MEXICO
SECRETARY OF STATE**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 25 THIRD-PARTY REGISTRATION AGENTS**

1.10.25.1 ISSUING AGENCY:
Office of the Secretary of State
[1.10.25.1 NMAC - N, 8-15-2005]

1.10.25.2 SCOPE: This rule applies to any special statewide election, general election, primary election, county wide election or elections to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).
[1.10.25.2 NMAC - N, 8-15-2005]

**1.10.25.3 STATUTORY
AUTHORITY:** Election Code, Section 1-2-1 NMSA 1978; Chapter 270, Laws 2005. The issuing authority shall issue rules to ensure the integrity of the registration

process and require that organizations account for all voter registration forms used by their registration agents.

[1.10.25.3 NMAC - N, 8-15-2005]

1.10.25.4 D U R A T I O N :
Permanent.

[1.10.25.4 NMAC - N, 8-15-2005]

1.10.25.5 EFFECTIVE DATE:
August 15, 2005 unless a later date is cited at the end of a section.

[1.10.25.5 NMAC - N, 8-15-2005]

1.10.25.6 OBJECTIVE: The Election Code (Chapter 1, Article 4) was amended by Chapter 270, Laws 2005. The purpose of the amendment is to define and regulate third-party voter registration agents and to set forth procedures, provide for reports and set penalties for violations.

[1.10.25.6 NMAC - N, 8-15-2005]

1.10.25.7 DEFINITIONS:

A. "Organization" means one or more persons organized as a group that are engaged in voter registration activities and includes, but is not limited to, political parties, candidate committees, political action committees, advertising campaigns, campaign committees and non-partisan interest groups.

B. "Registrant" means a qualified elector who has completed and subscribed a new or existing certificate of voter registration.

C. "Registration agent" means a state, county or federal employee who provides voter registration at a state agency (a/k/a registration officer), or tribal registration officer, or any other individual who assists another person in completion of a voter registration application.

D. "Third-party registration agent" means any other individual who either registers or assists another person in completion of a certificate of voter registration on behalf of an organization that is not a state, county or federal agency.

E. "Voter's copy" means the receipt for the certificate of voter registration, provided to the voter by a third-party registration agent.

[1.10.25.7 NMAC - N, 8-15-2005]

1.10.25.8 SECRETARY OF STATE PROCEDURES:

A. All third-party registration agents shall register with the secretary of state or the county clerk, prior to acting as a third-party registration agent, on a prescribed form. The form may be hand-delivered, hand-delivered by another person, or delivered by mail or facsimile.

B. The secretary of state shall prescribe a certificate of voter registra-

tion that includes a receipt for voter registration that shall be provided to the voter by the third-party registration agent. The voter's copy may include language informing the voter that the third-party registration agent is responsible for returning the original certificate of voter registration to the secretary of state or county clerk and that failure of the third-party registration agent to do so will result in the voter not being registered to vote in elections in New Mexico.

C. The secretary of state shall keep a record of all certificates of voter registration with a traceable number that are provided to third-party registration agents. Registration forms may be provided in quantities of fifty (50) per organization or individual. The secretary of state retains the discretion to increase these quantities for special events or circumstances.

[1.10.25.8 NMAC - N, 8-15-2005]

1.10.25.9 P R E S C R I B E D FORM:

A. Name of organization.

B. Permanent address of the organization.

C. Telephone number of the organization.

D. Name of the third-party registration agent.

E. Permanent or temporary addresses, if any, of third-party registration agent.

F. Date of birth of third-party registration agent.

G. Social security number of third-party registration agent.

H. Telephone number of third-party registration agent (optional).

I. A signed, sworn statement by each third-party registration agent that the agent will obey all state laws and rules regarding the registration of voters. The sworn statement shall contain language advising the agent of criminal penalties provided for false registration.

J. A printed notification that completed forms must be delivered to the secretary of state or county clerk within forty-eight (48) hours of completion or the next business day if the appropriate office is closed for that forty-eight (48) hour period.

K. A printed notification that the form is a public record, except for the social security number and date of birth.

[1.10.25.9 NMAC - N, 8-15-2005]

1.10.25.10 COUNTY CLERK PROCEDURES:

A. To minimize inconvenience to third-party registration agents, the secretary of state may designate county clerks as agents in registration of third-party registration agents. The secretary of state

shall provide all prescribed forms to county clerks, along with directions for their completion and maintenance.

B. The county clerk shall keep a record of all certificates of voter registration with a traceable number that are provided to third-party registration agents. A county clerk shall also provide voter registration forms in quantities of fifty (50) per organization. The county clerk may retain discretion to increase these quantities for special events or circumstances.

C. The county clerk shall promptly forward by facsimile means, copies of all documents required of third-party registration agents and file originals in the office of the county clerk.

[1.10.25.10 NMAC - N, 8-15-2005]

History of 1.10.25 NMAC:
[RESERVED]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 242: DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF RETAILERS FROM SALES OF CERTAIN TANGIBLE PERSONAL PROPERTY

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

[3.2.242.1 NMAC - N, 8/15/05]

3.2.242.2 SCOPE: This part applies to each person engaging in business in New Mexico.

[3.2.242.2 NMAC - N, 8/15/05]

3.2.242.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.

[3.2.242.3 NMAC - N, 8/15/05]

3.2.242.4 D U R A T I O N :
Permanent.

[3.2.242.4 NMAC - N, 8/15/05]

3.2.242.5 EFFECTIVE DATE:
8/15/05, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.242.5 NMAC - N, 8/15/05]

3.2.242.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating

Tax Act.

[3.2.242.6 NMAC - N, 8/15/05]

3.2.242.7 DEFINITIONS

A. As used in Laws 2005, Chapter 104, Section 25 "standard classroom" means a classroom that:

(1) is located in a school;

(2) is configured for a general education curriculum; and

(3) does not contain specialized equipment such as scientific laboratory equipment or musical instruments.

B. As used in Laws 2005, Chapter 104, Section 25 "school supplies normally used by students in a standard classroom for educational purposes" means implements and materials used by typical students of a general education curriculum. These include notebooks, paper, writing instruments, crayons, art supplies, paper clips, staples, staplers, scissors, and rulers valued at under \$15 per unit, and book bags, backpacks, handheld calculators, maps and globes valued at under \$100 per unit. The items that qualify for the deduction under Laws 2005, Chapter 104, Section 25 do not have to be used for school; they only have to be items normally used by students in a standard classroom setting.

[3.2.242.7 NMAC - N, 8/15/05]

3.2.242.8 ITEMS NORMALLY SOLD AS A UNIT:

Articles normally sold as a unit must be sold that way during the time period specified in Laws 2005, Chapter 104, Section 25 to qualify for the deduction. They cannot be priced separately and sold as individual items to qualify for the deduction. For example, shoes normally sold in a pair for \$180 cannot be sold singly for \$90 each to qualify for the deduction.

[3.2.242.8 NMAC - N, 8/15/05]

3.2.242.9 PURCHASES USING A RAIN CHECK:

A "rain check" is an assurance to a customer that an item on sale that is sold out or out of stock may be purchased later at the sale price. Receipts from qualified purchases of tangible personal property made with a rain check during the time period specified in Laws 2005, Chapter 104, Section 25 are deductible. Purchases made after this time period with a rain check regardless of when the rain check was issued are not deductible.

[3.2.242.9 NMAC - N, 8/15/05]

3.2.242.10 LAYAWAY SALES:

A retailer performs a service when holding merchandise on a layaway plan at the request of the customer.

A. The initiation of a layaway plan does not constitute a sale even if the customer makes a deposit to the retailer. A sale of the merchandise under the layaway plan occurs only when the final pay-

ment is made and the merchandise is delivered to the customer.

B. If the final payment on a layaway plan and delivery of merchandise occur at a time other than during the time period specified in Laws 2005, Chapter 104, Section 25, the receipts from the sale are not deductible under Laws 2005, Chapter 104, Section 25.

C. If the final payment on a layaway plan and delivery of merchandise occur during the time period specified in Laws 2005, Chapter 104, Section 25, the receipts are deductible under Laws 2005, Chapter 104, Section 25 if the other requirements of the section are met.

[3.2.242.10 NMAC - N, 8/15/05]

3.2.242.11 EXCHANGES AND REFUNDS

A. The exchange after the time period specified in Laws 2005, Chapter 104, Section 25 of tangible personal property that was purchased during the time period specified in Laws 2005, Chapter 104, Section 25 remains deductible if there is no additional charge for the exchange.

B. If an item of tangible personal property purchased during the time period specified in Laws 2005, Chapter 104, Section 25 and deductible under Laws 2005, Chapter 104, Section 25 is exchanged at a later time for an item of different value, the receipts from the subsequent sale are subject to gross receipts tax.

[3.2.242.11 NMAC - N, 8/15/05]

3.2.242.12 INTERNET, MAIL ORDER AND TELEPHONE SALES:

Qualified items sold to purchasers with a New Mexico billing address by mail, telephone, email and Internet shall qualify for deduction under Laws 2005, Chapter 104, Section 25 if:

A. the item is both delivered to and paid for by the customer during the time period specified in Laws 2005, Chapter 104, Section 25; or

B. the customer orders and pays for the item and the retailer accepts the order during the time period specified in Laws 2005, Chapter 104, Section 25 for immediate shipment, even if delivery of the item is made after the exemption period.

[3.2.242.12 NMAC - N, 8/15/05]

3.2.242.13 DOCUMENTING DEDUCTIBLE SALES:

Retailers claiming the deduction under Laws 2005, Chapter 104, Section 25 are required to maintain in their records the type of item sold, the date sold and the sales price of deductible merchandise sold during the time period specified in Laws 2005, Chapter 104, Section 25.

[3.2.242.13 NMAC - N, 8/15/05]

3.2.242.14 **ITEMS THAT DO NOT QUALIFY FOR THE DEDUCTION UNDER LAWS 2005, CHAPTER 104, SECTION 25:** In addition to those items specifically excluded in the statute, the following are ineligible for the deduction:

A. handheld computers, internet, or email devices;

B. personal digital assistants (PDAs), MP3 players, cassette players and recorders, cameras, books, magazines and other periodicals;

C. all computer and computer-related equipment not specifically deductible under Laws 2005, Chapter 104, Section 25 unless bundled with and included in the price of items that qualify for the deduction under Laws 2005, Chapter 104, Section 25;

D. all computer software unless bundled with and included in the price of items that qualify for the deduction under Laws 2005, Chapter 104, Section 25;

E. all games including video games, board games, computer games, and handheld gaming devices;

F. musical instruments;

G. materials and equipment used for making, repairing or altering clothing such as cloth, thread, yarn, needles buttons, zippers, and patterns;

H. athletic and protective gloves, pads, supporters, and helmets;

I. swimwear, cover-ups, and caps;

J. specialized footwear not readily adaptable for wearing on the street, such as ski boots, riding boots, waders, bowling shoes and shoes with cleats or spikes;

K. briefcases and luggage; prerecorded CDs, DVDs, and cassette tapes; and

L. data storage devices such as CD drives and ZIP drives.

[3.2.242.14 NMAC - N, 8/15/05]

3.2.242.15 **RECEIPTS THAT ARE NOT DEDUCTIBLE:** Receipts from the following transactions are not deductible under Laws 2005, Chapter 104, Section 25:

A. Receipts from performing services on tangible personal property that are deductible under Laws 2005, Chapter 104, Section 25, such as the alteration or repair of clothing.

B. Receipts from leasing or renting tangible personal property. In order for the deduction under Laws 2005, Chapter 104, Section 25 to apply the qualified items must be sold at retail.

[3.2.242.15 NMAC - N, 8/15/05]

History of 3.2.242 NMAC: [RESERVED]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.2.1 NMAC Section 16, effective 8/15/05. Section 16 of 3.2.1 NMAC is being amended to address a new gross receipts tax deduction (Laws 2005, Chapter 104, Section 25) and how the taxability of gift certificates is affected by the new deduction.

3.2.1.16 GROSS RECEIPTS - REAL ESTATE AND INTANGIBLE PROPERTY.

A. Insurance proceeds:

(1) Receipts of an insured derived from payments made by an insurer pursuant to an insurance policy are not subject to the gross receipts tax. Such receipts are not receipts derived from the sale of property in New Mexico, the leasing of property employed in New Mexico, or the performance of a service.

(2) Example: ABC is an auto dealer in the business of selling new and used cars. In addition to selling cars, ABC also maintains a service garage with a large inventory of automobile parts. As part of its regular sales practice, ABC allows potential purchasers to test drive the cars. ABC carries automobile insurance which is applicable in the situation where the potential purchaser is test driving the car. When an accident occurs, even though some or all the parts used to repair the automobile are taken from ABC's inventory of parts and ABC does the actual repair work, payment received from the insurance company for the damaged automobile is not gross receipts. Such a payment is not received as consideration for selling property in New Mexico, leasing property employed in New Mexico, or for performing services. ABC is not liable for compensating tax on the value of the parts used or the labor.

B. Speculative housing sales:

(1) Receipts of a person in the business of constructing improvements on real property owned and sold in the ordinary course of that person's construction business do not include amounts retained by financial institutions as prepaid finance charges or discounts, if these amounts are not received by the real estate vendor. It is immaterial whether or not such amounts are included in the quoted real estate sales price.

(2) The receipts of such a person include all amounts actually paid over which are attributable to improvements constructed on the real property sold in the ordinary course of that person's construction business.

(3) The receipts of such a person also include any amounts deducted by a title-insuring company to cover title insurance, legal fees, escrow fees, real estate brokerage commissions, real estate taxes, principal and interest on construction loans, liens, and the like.

(4) Example 1: X, a speculative builder, sells improvements to Y who arranges to finance \$43,000 with Z, a loan company. The loan company makes payment of \$41,800 to X and designates the amounts retained as prepaid finance charges and/or discounts. X's gross receipts in this example are \$41,800.

(5) Example 2: The same facts as Example 1 above are used except that the loan company Z made payment to a title insurance company, legal fees to a lawyer, escrow fees to a bank and also paid the real estate brokerage commission. These payments referred to are part of the gross receipts of the speculative builder and are not deductible under Subsection B of Section 3.2.1.16 NMAC, whether or not actually paid over to the speculative builder.

C. Receipts from sale of automotive service contracts:

(1) "Automotive service contract" means an undertaking, promise or obligation of the promisor, for a consideration separate from the sale price of a motor vehicle, to furnish or to pay for parts and labor to repair specified parts of the covered motor vehicle only if breakdowns (failures) of those specified parts occur within certain time or mileage limits. The promisor's obligation is conditioned upon regular maintenance of the motor vehicle by the purchaser of the automotive service contract at the purchaser's expense. The automotive service contract may also obligate the promisor to reimburse the purchaser for certain breakdown related rental and towing charges. The automotive service contract may require the payment of a specified "deductible" or "co-payment" by the purchaser in connection with each repair.

(2) The receipts of a person from selling an automotive service contract are not gross receipts. The undertaking, promise or obligation of the promisor under the automotive service contract to pay for or to furnish parts and service if an uncertain future event (breakdown) occurs is not within the definition of property under Subsection J of Section 7-9-3 NMSA 1978. Since the receipts from selling an automotive service contract do not arise "from selling property in New Mexico, from leasing property employed in New Mexico or from performing services in New Mexico", the receipts are not gross receipts as defined in Section 7-9-3.5 NMSA 1978 and are not subject to the tax imposed by Section 7-9-4 NMSA 1978.

(3) The furnishing by the promisor of parts or labor or both to fulfill the promisor's obligation when a breakdown occurs is a taxable event.

D. **Receipts from insurance company under an automotive service contract program:** The receipts of a New Mexico automotive dealer from an insurance company are not taxable gross receipts if the payments by the insurance company are to reimburse the dealer, who is promisor under an automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC, for all parts and labor furnished by the dealer under the contract or for parts and labor furnished by the dealer under the contract in an amount in excess of a specified reserve established by the dealer under an agreement with the insurance company. The receipt of the payments from the insurance company are not receipts from the sale of parts and labor but are payments to indemnify the dealer for the dealer's expense in fulfilling the dealer's obligation. The value of parts and labor furnished to make the repairs was subject to the gross receipts tax when the parts and labor were furnished to discharge the dealer's obligation as the promisor under the automotive service contracts.

E. Gift certificates:

(1) Receipts from the sale of gift certificates are receipts from the sale of intangible personal property of a type not included in the definition of "property" and, therefore, are not gross receipts.

(2) When a gift certificate is redeemed for merchandise, services or leasing, the person accepting the gift certificate in payment receives consideration, which is gross receipts subject to the gross receipts tax unless an exemption or deduction applies. The value of the consideration is the face value of the gift certificate.

(3) When a gift certificate is purchased during the time period set out in Laws 2005, Chapter 104, Section 25 subsequent redemption of the gift certificate for the purchase of qualified tangible personal property after that period is not deductible under Laws 2005, Chapter 104, Section 25.

(4) When a gift certificate is redeemed during the time period set out in Laws 2005, Chapter 104, Section 25 for the purchase of qualified tangible personal property, the receipts from the sale are deductible under Laws 2005, Chapter 104, Section 25.

F. **Merchant discount and interchange rate fee receipts:** Bank receipts derived from credit and debit card merchant discounts and bank interchange rate fees are not gross receipts within the meaning of the Gross Receipts and Compensating Tax Act and therefore are not taxable.

G. Prepaid telephone cards - "calling cards":

(1) Receipts from the sale of an unexpired prepaid telephone card, sometimes known as a "calling card", are receipts from the sale of a license to use the telecommunications system and, therefore, are gross receipts and are not interstate telecommunications gross receipts. Receipts from selling an expired prepaid telephone card are receipts from the sale of tangible personal property and are gross receipts and are not interstate telecommunications gross receipts.

(2) Receipts from recharging a rechargeable prepaid telephone card are receipts from the sale of a license to use the telecommunications system and are gross receipts and are not interstate telecommunications gross receipts.

(3) Subsection F of 3.2.1.16 NMAC is retroactively applicable to transactions and receipts on or after September 1, 1998.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 6/12/89, 6/28/89, 11/26/90, 2/1/95, 11/15/96, 9/15/98, 1/29/99; 3.2.1.16 NMAC - Rn & A, 3 NMAC 2.1.16, 4/30/01; A, 12/30/03; A, 8/15/05]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Explanatory paragraph: This is an emergency amendment to 11.4.7 NMAC Sections 10 and 17. This rule promulgation amends the existing rule governing payments for health care services. The amendment to Subparagraph (d) of Paragraph (5) of Subsection B of Section 10 adds two billing fields which medical providers are required to provide in billings to workers' compensation payers. The parties potentially affected are employers, insurers, workers covered by the Workers' Compensation Act and healthcare providers who provide services to workers under the Workers' Compensation Act. The full text of the rule can be found at www.state.nm.us/wca and the effective date of the amendment is July 28, 2005.

11.4.7.10 BILLING PROVISIONS AND PROCEDURES

B. Billing forms have been adopted from the US department of health and human services' health care financing administration.

(5) Completion of forms

(d) FORM CMS-1450 (UB-92) is self-explanatory with the following exceptions:

~~(i) Locators 7, 8, 9, 10, 11, 31, 33, 34, 35, 36, 37, 38, 44, 48, 49, 51,~~

~~52, 53, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 79, and 84 are not applicable.]~~

~~(i) Locators 7, 8, 9, 10, 11, 31, 33, 34, 35, 36, 37, 38, 48, 49, 51, 52, 53, 54, 56, 57, 58, 59, 60, 62, 63, 64, and 79 are not applicable.~~

11.4.7.17 DATA ACQUISITION:

A. The following language seeks to clarify 11.4.7.17 NMAC, which has always required that the data listed below be submitted to the workers' compensation administration. The submission requirement should be altered to include and require the following. It is the intent of the administration to enforce this already existing rule retrospectively. Under this explanation, no new obligations will exist. All workers' compensation payers shall submit ~~[the following required data by August 3, 2005 for the period January 1, 2004 through June 30, 2005. Thereafter, payers shall submit this information] required inpatient services data by January 1, 2006, for the period July 1, 2005, through September 30, 2005. Thereafter, payers shall submit required inpatient services data on a quarterly basis as follows:~~

~~(1) January 1 through March 31 by July 1;~~

~~(2) April 1 through June 30 by October 1;~~

~~(3) July 1 through September 30 by January 1; and,~~

~~(4) October 1 through December 31 by April 1.]~~

~~(1) October 1 through December 31 by April 1;~~

~~(2) January 1 through March 31 by July 1;~~

~~(3) April 1 through June 30 by October 1; and,~~

~~(4) July 1 through September 30 by January 1.~~

~~**B.** The data shall be in a format acceptable to the WCA. The economic research bureau shall distribute a specific set of instructions for the submission of data.~~

~~**C.** The economic research bureau will review the data to determine acceptability. If the data is determined to be unacceptable, the WCA will send a letter to the payer requesting correction and/or the addition of data within thirty days from the date of the payer's receipt of the determination. If the payer is unable to provide the data within the thirty days, it may request one thirty day extension.~~

~~**D.** The payer may also appeal the determination of acceptability to the deputy director of internal operations within ten (10) days of the receipt of the determination letter.~~

~~**E.** If the data is not received after all appeals and extensions of~~

~~time have been exhausted, the economic research bureau may petition for a hearing before the WCA director or his designee and seek penalties pursuant to NMSA 1978, section 52-1-61 (1991).~~

~~**F.** Every payer shall report to the WCA on a quarterly basis and in a format to be determined by the director, the following medical information pertaining to inpatient, outpatient, and emergency room services for each claimant for whom they provide benefits, beginning with bills for health care services provided in New Mexico where discharge or termination of services occurred between January 1, 2004 through June 30, 2005:~~

~~(1) date of service;~~

~~(a) with inpatient data: date of admission, date of discharge;~~

~~(b) with outpatient data: date services initiated, date services terminated.~~

~~(2) diagnosis (ICD-9 CM or CPT);~~

~~(a) principal diagnosis code;~~

~~(b) 2nd diagnosis code;~~

~~(c) 3rd diagnosis code;~~

~~(d) 4th diagnosis code;~~

~~(e) 5th diagnosis code;~~

~~(f) 6th diagnosis code;~~

~~(g) 7th diagnosis code;~~

~~(h) 8th diagnosis code;~~

~~(i) 9th diagnosis code;~~

~~(j) diagnosis related group (DRG) code.~~

~~(3) code for each service: revenue codes (up to 23 codes may be reported) and corresponding HCPCS codes if available;~~

~~(4) billed amount: total gross charges for services; total charge per revenue code;~~

~~(5) paid amount: total paid amount for services;~~

~~(6) type of practitioner;~~

~~(7) bill identification number;~~

~~(8) NDC numbers (for pharmaceuticals);~~

~~(9) procedure (ICD-9 CM or CPT);~~

~~(a) principal procedure code;~~

~~(b) 2nd procedure code;~~

~~(c) 3rd procedure code;~~

~~(d) 4th procedure code;~~

~~(e) 5th procedure code;~~

~~(f) 6th procedure code.~~

~~(10) patient data;~~

~~(a) patient first name;~~

~~(b) patient last name;~~

~~(c) patient social security number;~~

~~(d) patient date of birth;~~

~~(e) patient sex;~~

~~(f) patient medical record number;~~

~~ber;~~

~~(g) patient street address;~~

~~(h) patient zip code;~~
~~(11) provider data;~~
 (a) type of facility;
 (b) NM state license number;
 (c) provider zip code.
~~(12) employer data: identification number;~~
~~(13) insurer data: federal employer identification number;~~
 (14) discharge status;
 (15) type of admission;
 (16) source of admission;
 (17) type of service.]

B. The inpatient services data shall be submitted in a format acceptable to the WCA. The economic research bureau shall distribute a specific set of instructions annually for the submission of required data. If required data is not available from payer, payer must submit in writing an explanation of what data is not available, and a schedule for meeting data requirements by January 1 of each year, beginning with January 1, 2006.

C. If the required inpatient services data is not received from payer, or a waiver on data requirements is not granted by the economic research bureau after all appeals and extensions of time for required data have been exhausted, the economic research bureau may petition for a hearing before the WCA director or his designee and seek penalties pursuant to NMSA 1978, section 52-1-61 (1991).

End of Adopted Rules Section

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Other Material Related to Administrative Law

**NEW MEXICO
COMMISSION OF PUBLIC RECORDS****NOTICE OF REGULAR MEETING**

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, August 23, 2005, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM 87507. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. 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 hearing, please contact Darlene A. Torres at 476-7902 by August 15, 2005. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NEW MEXICO COMMISSION OF PUBLIC RECORDS**August 23, 2005****AGENDA**

- I. CALL TO ORDER**
- II. APPROVAL OF THE AGENDA**
- III. APPROVAL OF THE MINUTES: June 21, 2005**
- IV. ACTION ITEMS**
 - A. FY 07 Appropriation Request
 - B. Approval of Gift Agreements:
 - 1. Thelma Pauline Zuber Pairsh Papers
 - 2. Agapito Olivas Family Papers
 - 3. Spanish Colonial Arts Society Records (1913-1965)
- V. NEW BUSINESS**

Presentation by John Martinez, Administrative Law Director
- VI. OLD BUSINESS**
 - A. Report from Commission Sub-Committee
 - B. Building Issues
- VII. DIRECTOR'S REPORT**
- VIII. SCHEDULING OF NEXT MEETING**
- IX. ADJOURNMENT**

End of Other Related Material Section

2005

SUBMITTAL DEADLINES AND PUBLICATION DATES

Volume XVI	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 14
Issue Number 8	April 15	April 29
Issue Number 9	May 2	May 13
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.