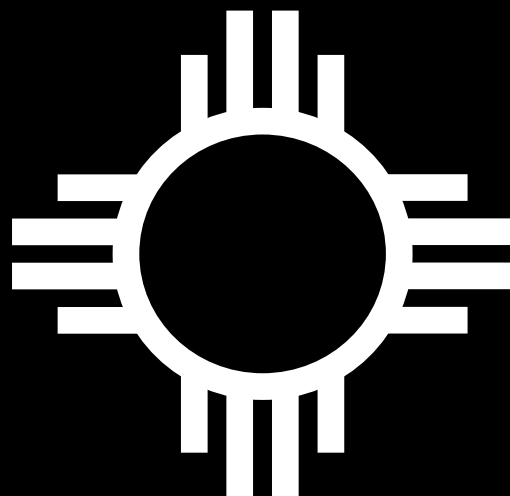


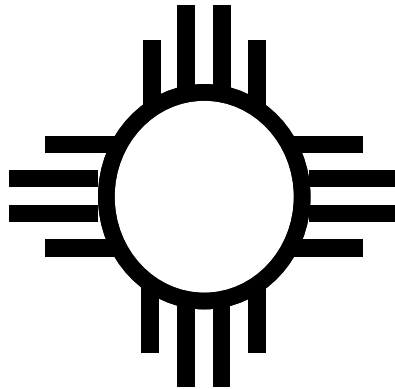
**NEW
MEXICO
REGISTER**



Volume XVII
Issue Number 1
January 17, 2006

New Mexico Register

Volume XVII, Issue Number 1
January 17, 2006



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2006

COPYRIGHT © 2006
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XVII, Number 1

January 17, 2006

Table of Contents

Notices of Rulemaking and Proposed Rules

Architects, Board of Examiners for	
Public Hearing Regular Meeting	1
Health, Department of	
Notice of Public Hearing	1
Information Technology Commission	
Notice of Proposed Repeal, Rulemaking and Procedural Order	1
Personnel Board	
State Personnel Board Public Rules Hearing	2
Public Regulation Commission	
Notice of Amendments to Telecommunications Rule	2
Taxation and Revenue Department	
Notice of Hearing and Proposed Rules	2

Adopted Rules

Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Albuquerque-Bernalillo County Air Quality Control Board			
20.11.60 NMAC	R	Permitting In Nonattainment Areas	5
20.11.61 NMAC	R	Prevention of Significant Deterioration	5
20.11.60 NMAC	N	Permitting In Nonattainment Areas	5
20.11.61 NMAC	N	Prevention of Significant Deterioration	19
Environmental Improvement Board			
20.2.74 NMAC	A	Permits - Prevention of Significant Deterioration	37
20.2.79 NMAC	A	Permits - Nonattainment Areas	50
Game and Fish, Department of			
19.31.4 NMAC	A/E	Fisheries	62
19.31.10 NMAC	A	Hunting and Fishing - Manner and Method of Taking	64
Nursing, Board of			
16.12.4 NMAC	R	Certification of Hemodialysis Technicians and Training Programs	65
16.12.4 NMAC	N	Certification of Hemodialysis Technicians and Training Programs	65
16.12.9 NMAC	N	Management of Chronic Pain with Controlled Substances	72
16.12.10 NMAC	N	Management of Medical Records	73
16.12.1 NMAC	A	Nursing and Health Care Related Providers - General Provisions	74
16.12.2 NMAC	A	Nurse Licensure	78
16.12.3 NMAC	A	Nursing Education Programs	92
16.12.6 NMAC	A	Nurse Licensure Compact	95
Public Regulation Commission			
Utility Division			
17.11.10 NMAC	A/E	State Rural Universal Service Fund	95
Regulation and Licensing Department			
Construction Industries Division			
14.6.3 NMAC	R	Contractor's License Requirements	97
14.6.4 NMAC	R	Journeyman Certification	97
14.6.6 NMAC	R	Classifications and Scopes	98
19.15.40 NMAC	R	New Mexico Liquefied Petroleum Gas Standard	98
14.6.3 NMAC	N	Contractor's License Requirements	98
14.6.4 NMAC	N	Journeyman Certification	100
14.6.6 NMAC	N	Classifications and Scopes	102

14.7.8 NMAC	N	2003 New Mexico Historic Earthen Buildings	107
19.15.40 NMAC	N	New Mexico Liquefied Petroleum Gas Standard	109
14.5.2 NMAC	A	Permits	116
14.10.5 NMAC	A	2005 New Mexico Electrical Safety Code	116
Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board			
16 NMAC 26.2	R	Licensure and Licensure Requirements	117
16 NMAC 26.3	R	Application Procedures and Qualifications for Licensure	117
16.26.2 NMAC	N	Licensure Requirements	117
16.26.10 NMAC	A	Emergency Licensure	120
16.26.1 NMAC	Rn & A	Hearing, Speech and Audiology Practitioners - General Provisions	121
16.26.4 NMAC	Rn & A	Annual Renewal of Licenses.	122
16.26.5 NMAC	Rn & A	Continuing Education	123
16.26.6 NMAC	Rn & A	Fees	124
16.26.7 NMAC	Rn & A	Grounds for Disciplinary Action.	125
16.26.8 NMAC	Rn & A	Procedures for Disciplinary Action.	126
16.26.9 NMAC	Rn & A	Code of Ethics	126
Taxation and Revenue Department			
3.1.2 NMAC	A	Promulgation of Regulations	128
3.1.4 NMAC	A	Filing	128
Workers' Compensation Administration			
11.4.12 NMAC	A/E	Uninsured Employers' Fund	130

Other Material Related to Administrative Law

Workers' Compensation Administration

Director's Response to Public Comment: UEF Rules Changes.	133
---	-----

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

The *New Mexico Register*
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for
Architects

PO Box 509
Santa Fe, NM
505-827-6375

Public Hearing Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, February 3, 2006. The meeting will be held in the Conference Room of the Board office, Lamy Building, 491 Old Santa Fe Trail, beginning at 9:00 a.m. A public rules hearing will also be held to amend the architectural rules. Content will be Continuing Education activities. Proposed rules are available by contacting the Board office at (505) 827-6375.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 827-6375 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

NEW MEXICO DEPARTMENT OF HEALTH

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.4.3 NMAC "Control of Disease and Conditions of Public Health Significance". The Hearing will be held on Tuesday, February 21, 2006 at 9:00 A.M. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to add or remove certain diseases or conditions from the index of notifiable conditions and make certain clarifications and modifications to the existing regulation.

A copy of the proposed regulation can be obtained from:

Monica Romero, Administrative Assistant

Infectious Disease Bureau
P.O. Box 26110
Santa Fe, NM 87502-6110
(505) 476-3035

Please submit any written comments regarding the proposed regulation to:

Joan Baumbach, Bureau Chief
Infectious Disease Bureau
P.O. Box 26110
Santa Fe, NM 87502-6110

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

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Monica Romero by telephone at 505-476-3035. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO INFORMATION TECHNOLOGY COMMISSION

STATE OF NEW MEXICO
INFORMATION TECHNOLOGY COM-
MISSION

IN THE MATTER OF
REPEALING and REPLACING 1.12.1
NMAC "GENERAL PROVISIONS"

NOTICE OF PROPOSED REPEAL,
RULEMAKING AND PROCEDURAL
ORDER

I. SOLICITATION OF COMMENTS

The Information Technology Commission ("Commission") issues this Notice of Proposed Repeal, Rulemaking and Procedural Order to provide an opportunity for public comment and to create a record for a decision on proposing the repeal, and adoption of a new rule: 1.12.1 NMAC, "GENERAL PROVISIONS". The Commission requests written comments from all interested persons and entities on the proposed new rule.

II. ORDER

IT IS THEREFORE ORDERED that this Notice of Proposed Repeal, Rulemaking and Procedural Order ("Notice") be issued.

IT IS FURTHER ORDERED that all inter-

ested parties may file written comments on the repeal, and proposed rule on or before February 17, 2006. All relevant and timely comments, including data, views, or arguments will be considered by the Commission before final action is taken in this proceeding. Written comments must be filed prior to the deadline for receipt of comments either in hard copy with the Chief Information Officer, Office of the Chief Information Officer, 5301 Central Ave NE, Suite 1500, Albuquerque, NM 87108, or by electronic mail at cio@state.nm.us. The rule number must appear on each submittal. Comments will be available for public inspection during regular business hours in the Office of the Chief Information Officer, 5301 Central Ave NE, Suite 1500, Albuquerque, NM 87108.

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

PLEASE BE ADVISED that the Office of the Chief Information Officer ("Office") shall review all comments for compliance with the State information architecture and the State strategic plan, prepare a summary of all comments received before the deadline, and report its findings and recommendation to the Commission. The Commission shall consider the comment draft of the proposed rule, the summary of comments, and the findings and recommendations of the Office at a meeting held after the comment period. The Commission may adopt without revision, revise and adopt, revise and seek additional comments, or reject the proposed repeal and adoption of the new rule at the public meeting to be held on Tuesday, February 21, 2006 at 8:30am in the State Capitol Building, Suite 322.

IT IS FURTHER ORDERED that the

Commission may modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that staff of the Office of the Chief Information Officer shall cause a copy of this Notice to be published once in the *New Mexico Register*, once in the *Albuquerque Journal*, and to be posted to the Internet at <http://www.cio.state.nm.us> all on or before January 17, 2006. To obtain a copy of the proposed rule: (1) send the rule name, rule number, and a self-addressed envelope to the Office of the Chief Information Officer, 5301 Central Ave NE, Suite 1500, Albuquerque, NM 87108; (2) call the Office of the Chief Information Officer at 505-841-6605 with the rule name and rule number; e-mail the Chief Information Officer at cio@state.nm.us with the rule name and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail); or download the proposed rule from the Internet at <http://www.cio.state.nm.us>. The proposed rule is also available for inspection and copying during regular business hours in the Office of the Chief Information Officer, 5301 Central Ave NE, Suite 1500, Albuquerque, NM 87108.

PLEASE BE ADVISED THAT individuals with a disability who are in need of summaries or other types of accessible forms of the proposed rule or comments may contact the Chief Information Officer at 505-841-6605.

DONE, this _____ day of _____, 2005.

INFORMATION TECHNOLOGY COMMISSION

By: Carroll Cagle, Chair

NEW MEXICO PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Taos, New Mexico on Friday, March 10, 2006. The meeting will be held during the Board's regular business meeting beginning at 9:00 a.m., with location in Taos to be determined.

The purpose of the Rule Hearing is to consider amending and/or suspending SPB Rules and Regulations related to suspension.

A final agenda for the board meeting will be available at the board office on February 28, 2006.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. February 16, 2006 to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Sandra Perez. Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at www.state.nm.us/spo/ beginning January 18, 2006.

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 in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

NEW MEXICO PUBLIC REGULATION COMMISSION

STATE OF NEW MEXICO
PUBLIC REGULATION COMMISSION
1120 Paseo de Peralta
P.O. Box 1269
Santa Fe, NM 87504-1269

NOTICE OF AMENDMENTS TO TELECOMMUNICATIONS RULE

NOTICE is hereby given, in accordance with NMSA 1978, 8-8-15, that effective December 28, 2005, the New Mexico Public Regulation Commission (NMPRC) implemented emergency amendments to its Rural Universal Service Fund Rule, 17.11.10 NMAC. The amendments (1) change a provision of the rule that had established a state-wide "affordability benchmark" rate for business telephone lines to a series of company-specific "affordability benchmark" rates for business telephone lines, a change that affects the amount of money eligible telecommunications carriers may receive from the State Universal Service Fund to offset revenues they lose as a result of reducing in-state long distance call charges; and (2) eliminate an inconsistency in the rule that also affects the amount of money eligible carriers may receive from the same fund to offset revenue losses resulting from reducing in-state

long distance call charges. Interested persons may obtain a copy of the amended rule from the NMPRC website, www.nmprc.state.nm.us by clicking on "meetings" on the dropdown menu on the left side, then clicking on "public notices," then scrolling down to "utility" and finding the amended rule in the items listed under Case 05-00211-UT, or by writing NMPRC Office of General Counsel, P.O. Box 1269, Santa Fe, New Mexico 87504. Interested persons may present their views on the amendments to the rule by filing written comments with Melanie Sandoval, New Mexico Public Regulation Commission, Attention: Amended Rule Relating to Access Charge Reform, 224 East Palace Avenue, Marian Hall, Santa Fe, NM 87501. Such written comments must be filed no later than February 2, 2006. A public comment hearing at which interested persons may present their views on the amendments to the rule will be held February 16, 2006 beginning at 9:30 a.m. during the Commission's regular work session to be held in the Fourth Floor Hearing Room in the P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, NM.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Gross Receipts and Compensating Tax Act

3.2.302.8 NMAC Section 7-9-96 NMSA 1978

(Service For Resale Tax Credit)

The proposals were placed on file in the Office of the Secretary on January 1, 2006. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about March 31, 2006.

A public hearing will be held on the proposals on Wednesday, March 1, 2006, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments

on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before March 1, 2006.

TITLE 3: TAXATION
CHAPTER 2: GROSS RECEIPTS TAXES
PART 302: CREDIT - GROSS RECEIPTS TAX - SERVICE FOR RESALE

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

3.2.302.2 **SCOPE:** This part applies to each person engaging in business in New Mexico.
 [3.2.302.2 NMAC - N, XXX]

3.2.302.3 **S T A T U T O R Y AUTHORITY:** Section 9-11-6.2 NMSA 1978.
 [3.2.302.3 NMAC - N, XXX]

3.2.302.4 **D U R A T I O N :** Permanent.
 [3.2.302.4 NMAC - N, XXX]

3.2.302.5 **EFFECTIVE DATE:** XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.
 [3.2.302.5 NMAC - N, XXX]

3.2.302.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
 [3.2.302.6 NMAC - N, XXX]

3.2.302.7 **DEFINITIONS:** [Reserved.]

3.2.302.8 SERVICE FOR RESALE TAX CREDIT

A. Sale of service for resale credit. The seller of a service subject to the gross receipts tax or governmental gross receipts tax may take a credit against the gross receipts or governmental gross receipts tax due in an amount equal to 10% of the receipts from the sale multiplied by 5%, if the taxpayer's business is located in the unincorporated area of a county, and multiplied by 3.775%, if the taxpayer's business is located in a municipality, pro-

vided all of the following conditions are met:

(1) the sale for which the credit is taken is subject to gross receipts tax or governmental gross receipts tax;

(2) the service is sold for subsequent resale;

(3) the subsequent resale is not subject to the gross receipts tax; and

(4) the buyer of the service certifies to the seller in writing and in a form prescribed by the secretary that the subsequent resale is in the ordinary course of the buyer's business and will not be subject to gross receipts tax or governmental gross receipts tax.

B. Examples.

(1) A's business is located in a municipality. A sells engineering services to B. B resells the engineering services to C. C sells the services to the final consumer. D. B accepts an ntfc pursuant to Section 7-9-48 NMSA 1978 from C because C's sale to D will be taxable. B, however, cannot execute an ntfc to A, because B's sale to C is not taxable. B provides written documentation to A that the resale of the service (B's sale to C) is in the ordinary course of business and will not be subject to gross receipts tax. A pays gross receipts tax on the sale to B; but takes a credit of 10 percent of the gross receipts from the sale to B multiplied by 3.775 percent (gross receipts multiplied by .10 multiplied by .03775).

(2) A, located in Albuquerque, sells a service to B for \$10,000 on July 15, 2005. B provides documentation that the next sale is in the ordinary course of business and is not subject to gross receipts tax. A may claim a credit of \$37.75 (10,000 multiplied by .10 multiplied by .03775).

(3) X, a business located in the unincorporated part of a county, sells accounting services which are performed on tribal land to Y (not a tribal member) who resells those services (in connection with other services which are also performed on tribal land) to Z, a Native American residing on tribal land of which he is a member. Y's sale to Z is not subject to the gross receipts tax because the service was performed on tribal land for a tribal member. Y therefore may not execute an ntfc pursuant to Section 7-9-48 NMSA 1978 to X, because a deduction for services sold for resale is only allowed if the next sale is taxable. X, however, may reduce his tax due on the sale to Y by the amount of the credit — 10 % of the gross receipts from the sale multiplied by 5% — if Y provides written documentation that the resale (Y's sale to Z) is in the ordinary course of business and will not be subject to gross receipts tax.

C. Claiming the sale of service for resale credit does not preclude executing an ntfc. A reseller who takes the

sale-for-resale credit for the sale of a service may execute an ntfc pursuant to Section 7-9-48 NMSA 1978 for the original purchase of that service.

D. Example: N purchases drafting services from M and resells them to O who resells them outside New Mexico for initial use outside New Mexico. N can reduce the tax due on his sale to O by the amount of the credit and N may execute an ntfc to M for the purchase of the drafting services.

E. Sale of service for resale credit; documentation. In order to take the sale-for-resale credit, the seller must obtain from the buyer a document certifying that the service is purchased for resale in the ordinary course of business and stating the reason or reasons why the resale is not subject to gross receipts tax or governmental gross receipts tax. The form of the buyer's certification shall be determined by the secretary.

[3.2.302.8 NMAC - N, XXX]

**End of Notices and
Proposed Rules Section**

This page intentionally left blank.

Adopted Rules

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

20.11.60 NMAC, Permitting In Nonattainment Areas (filed 8/30/02) is hereby repealed effective 1/23/06.

20.11.61 NMAC, Prevention of Significant Deterioration (filed 8/30/02) is hereby repealed effective 1/23/06.

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

TITLE 20 ENVIRONMENTAL PROTECTION CHAPTER 11 ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD PART 60 PERMITTING IN NONATTAINMENT AREAS

20.11.60.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
[20.11.60.1 NMAC - Rp, 20.11.60.1 NMAC, 1/23/06]

20.11.60.2 SCOPE:
A. 20.11.60 NMAC establishes a pre-construction permit program for new major stationary sources and major modifications at existing major stationary sources located in nonattainment areas.

B. Exempt: 20.11.60 NMAC does not apply to sources within Bernalillo county, which are located on indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.
[20.11.60.2 NMAC - Rp, 20.11.60.2 NMAC, 1/23/06]

20.11.60.3 STATUTORY AUTHORITY: 20.11.60 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4 and 74-2-5; the Joint Air Quality Control Board Ordinance; Bernalillo County Ordinance No. 94-5, Sections 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4.
[20.11.60.3 NMAC - Rp, 20.11.60.3

NMAC, 1/23/06]

20.11.60.4 DURATION: Permanent.
[20.11.60.4 NMAC - Rp, 20.11.60.4 NMAC, 1/23/06]

20.11.60.5 EFFECTIVE DATE: January 23, 2006, unless a later date is cited at the end of a section.
[20.11.60.5 NMAC - Rp, 20.11.60.5 NMAC, 1/23/06]

20.11.60.6 OBJECTIVE: The objective of 20.11.60 NMAC is to implement a pre-construction permit program for new or modified major stationary sources that wish to locate in an area where federal ambient air quality standards are being exceeded.
[20.11.60.6 NMAC - Rp, 20.11.60.6 NMAC, 1/23/06]

20.11.60.7 DEFINITIONS: In addition to the definitions in 20.11.60.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.60.7 NMAC shall govern.

A. "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with the following, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limit under 20.11.60.23 NMAC. Instead, Subsections E and II of 20.11.60.7 NMAC shall apply for those purposes.

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

B. "Administrator" means the administrator of the United States environmental protection agency (USEPA) or an authorized representative.

C. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with:

(1) times of visitor use of the mandatory federal class I area; and

(2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

D. "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source, (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both,) and the most stringent of the following:

(1) the applicable standard set forth in 40 CFR Part 60 or 61;

(2) any applicable state implementation plan emissions limitation including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

E. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the

source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of Paragraph (1) of Subsection E of 20.11.60.7 NMAC.

(2) For an existing emissions unit (other than an electric utility steam generating unit) baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10 year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under 20.11.60.7 NMAC or under a plan approved by the administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of Subsection D of 20.11.60.18 NMAC.

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecu-

tive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (2) of Subsection E of 20.11.60.7 NMAC.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a plantwide applicability limit for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of Subsection E of 20.11.60.7 NMAC, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of Subsection E of 20.11.60.7 NMAC, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of Subsection E of 20.11.60.7 NMAC.

F. "Begin actual construction" means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building support and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

G. "Best available control technology (BACT)" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would

exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

H. "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group," that is, which have the same two-digit code, as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively).

I. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

J. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

K. "Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of 20.11.60 NMAC, to sample, condition, if applicable, analyze, and provide a record of emissions on a continuous basis.

L. "Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the

determination and recording of the pollutant mass emissions rate in terms of mass per unit of time.

M. "Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of 20.11.60 NMAC, to monitor process and control device operational parameters, for example, control device secondary voltages and electric currents, and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and to record average operational parameter value(s) on a continuous basis.

N. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

O. "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric steam generating unit as defined in Subsection N of 20.11.60.7 NMAC. For purposes of 20.11.60.7 NMAC, there are two types of emissions units.

(1) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of Subsection O of 20.11.60.7 NMAC. A replacement unit, as defined in 20.11.60.7 NMAC, is an existing unit.

P. "Federal class I area" means any federal land that is classified or reclassified as "class I".

Q. "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

R. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40

CFR 51.165 and 40 CFR 51.166.

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

T. "Lowest achievable emission rate (LAER)" means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard.

U. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated new source review pollutant; and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the federal Clean Air Act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any fed-

erally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source; or

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan for the state in which is project is located and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.11.60.23 NMAC for a plantwide applicability limit for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.11.60.23 NMAC shall apply.

V. "Major stationary source" shall have the following meanings.

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated new source review pollutant subject to regulation under the federal Clean Air Act; or

(2) Any physical change that would occur at a stationary source not qualifying under Paragraph (1) of Subsection V of 20.11.60.7 NMAC as a major stationary source, if the change would constitute a major stationary source by itself.

(3) A major stationary source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

(4) A stationary source shall not be a major stationary source due to fugitive emissions, to the extent they are quantifiable, unless the source belongs to:

(a) any category in Subsection B of 20.11.60.22 NMAC; or

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

(5) A stationary source shall not

be a major stationary source due to secondary emissions.

W. "Mandatory federal class I area" means those federal lands that are international parks, national wilderness areas which exceed 5,000 acres in size, national memorial parks which exceed 5,000 acres in size, and national parks which exceed 6,000 acres in size, and which were in existence on August 7, 1977. These areas may not be redesignated.

X. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

Y. "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable state implementation plan (SIP).

Z. "Net emissions increase" shall have the following meanings:

(1) with respect to any regulated new source review pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection E of 20.11.60.12 NMAC; and

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection E of 20.11.60.7 NMAC, except that Subparagraphs (c) and (d) of Paragraph (2) of Subsection E of 20.11.60.7 NMAC shall not apply.

(2) an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs;

(3) an increase or decrease in actual emissions is creditable only if:

(a) it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

(b) either the department or the administrator has not relied on it in issuing a permit for the source under approved regulations and is in effect when the increase in actual emissions from the particular change occurs;

(4) an increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(5) a decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(c) the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(d) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(6) an increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant; any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days;

(7) Paragraph (1) of Subsection A of 20.11.60.7 NMAC shall not apply for determining creditable increases and decreases or after a change.

AA. "Nonattainment area" means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling, or other methods determined by the administrator to be reliable, to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under Subparagraphs (A) through (C) of Section 107(d)(1) of the federal Clean Air Act.

BB. "Nonattainment major new source review (NSR) program" means a major source preconstruction permit program that has been approved by the administrator and incorporated into the New Mexico state implementation plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major new source review permit.

CC. "Part" means an air quality control regulation under Title 20, Chapter 11 of the New Mexico administrative code (NMAC), unless otherwise noted; as adopted or amended by the board.

DD. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly.

EE. "Potential to emit"

means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable.

FF. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters, for example, control device secondary voltages and electric currents, and other information, for example, gas flow rate, oxygen or carbon dioxide concentrations, and calculate and record the mass emissions rate, for example, pounds per hour on a continuous basis.

GG. "Prevention of significant deterioration (PSD) permit" means any permit that is issued under 20.11.61 NMAC.

HH. "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

II. "Projected actual emissions" means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated new source review pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(2) shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that

an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection E of 20.11.60.7 NMAC and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of Subsection II of 20.11.60.7 NMAC, may elect to use the emissions unit's potential to emit, in tons per year, as defined under Subsection EE of 20.11.60.7 NMAC.

JJ. "Regulated new source review pollutant", for purposes of 20.11.60 NMAC, means the following:

(1) nitrogen oxides or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated; or

(3) any pollutant that is a constituent or precursor of a general pollutant listed in Paragraphs (1) or (2) of Subsection JJ of 20.11.60.7 NMAC, provided that a constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant.

KK. "Replacement unit" means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

LL. "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of Subsection LL of 20.11.60.7 NMAC, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary

emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

MM. "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

(1) carbon monoxide, 100 tons per year;

(2) nitrogen oxides, 40 tons per year;

(3) sulfur dioxide, 40 tons per year;

(4) PM₁₀ emissions, 15 tons per year;

(5) ozone, 40 tons per year of volatile organic compounds; or

(6) lead, 0.6 tons per year.

NN. "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant for that pollutant.

OO. "Stationary source" means any building, structure, facility, or installation which emits or may emit any regulated new source review pollutant.

PP. "Temporary source" means a stationary source which changes its location or ceases to exist within one year from the date of initial start of operations.

QQ. "Visibility impairment" means any humanly perceptible change in visibility, that is, visual range, contrast, coloration, from that which would have existed under natural conditions.

[20.11.60.7 NMAC - Rp, 20.11.60.7 NMAC, 1/23/06]

20.11.60.8 VARIANCES :
[Reserved]

[20.11.60.8 NMAC - Rp, 20.11.60.8 NMAC, 1/23/06]

20.11.60.9 SAVINGS CLAUSE:
Any amendment to 20.11.60 NMAC, which is filed, with the state records center shall not affect actions pending for violation of a city or county ordinance, or air quality control board regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part, or regulation section in effect at the time the violation was committed.

[20.11.60.9 NMAC - Rp, 20.11.60.9 NMAC, 1/23/06]

20.11.60.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of 20.11.60 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.60 NMAC.

[20.11.60.10 NMAC - Rp, 20.11.60.10 NMAC, 1/23/06]

20.11.60.11 DOCUMENTS :
Documents incorporated and cited in 20.11.60 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.

[20.11.60.11 NMAC - Rp, 20.11.60.11 NMAC, 1/23/06]

20.11.60.12 APPLICABILITY:

A. Any person constructing any new major stationary source or major modification shall obtain a permit from the department in accordance with the requirements of 20.11.60 NMAC prior to the start of construction or modification if either of the following conditions applies:

(1) The major stationary source or major modification will be located within a nonattainment area so designated pursuant to Section 107 of the federal Clean Air Act and will emit a regulated new source review pollutant for which it is major and which the area is designated nonattainment for; or

(2) The major stationary source or major modification will be located within an area designated attainment or unclassifiable pursuant to Section 107 of the federal Clean Air Act and will emit a regulated new source review pollutant for which it is major and the ambient impact of such pollutant would exceed any of the significance levels in Subsection A of 20.11.60.22 NMAC at any location that does not meet any national ambient air quality standard for the same pollutant. (See Subsection D of 20.11.60.12 NMAC)

B. The requirements of 20.11.60 NMAC apply to each regulated new source review pollutant meeting the criteria of either Paragraph (1) or Paragraph (2) of Subsection A of 20.11.60.12 NMAC.

C. For an area which is nonattainment for ozone, volatile organic compounds and oxides of nitrogen are the regulated new source review pollutants which may make 20.11.60 NMAC applicable under the provisions of Paragraph (1) of Subsection A of 20.11.60.12 NMAC.

D. Other requirements.

(1) A new major stationary source or major modification which meets the criteria of Paragraph (2) of Subsection A of 20.11.60.12 NMAC shall demonstrate that the source or modification will not cause or

contribute to a violation of any national ambient air quality standard by meeting the following requirements and no others of 20.11.60 NMAC:

(a) Paragraph (2) of Subsection C of 20.11.60.15 NMAC regarding emission offsets;

(b) Subsection D of 20.11.60.15 NMAC regarding a net air quality benefit;

(c) 20.11.60.17 NMAC - Emission Offset Baseline;

(d) 20.11.60.18 NMAC - Emission Offset; and

(e) 20.11.60.20 NMAC - Air Quality Benefit.

(2) In addition, a new source or modification which meets the criteria of Paragraph (2) of Subsection A of 20.11.60.12 NMAC and is also a major stationary source or major modification as defined in 20.11.61 NMAC, Prevention of Significant Deterioration (PSD), shall obtain a PSD permit under the provisions of 20.11.61 NMAC.

E. Applicability procedures.

(1) Except as otherwise provided in Paragraphs (3) and (4) of Subsection E of 20.11.60.12, and consistent with the definition of major modification, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) and (4) of Subsection E of 20.11.60.12 NMAC. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (the second step of the process) is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions

unit, equals or exceeds the significant amount for that pollutant.

(4) Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.11.60.23 NMAC.

F. The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection II of 20.11.60.7 NMAC for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) a description of the project;

(b) identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection II of 20.11.60.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of Subsection F of 20.11.60.12 NMAC to the department. Nothing in Paragraph (2) of Subsection F of 20.11.60.12 NMAC shall be construed to require the owner or operator of such a unit to obtain any determination from the department; however, necessary preconstruction approvals and/or permits must be obtained before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified in Subparagraph (b) of Paragraph (1) of Subsection F of 20.11.60.12 NMAC; and

calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Paragraph (3) of Subsection F of 20.11.60.12 NMAC setting out the unit's annual emissions during the year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of Subsection F of 20.11.60.12 NMAC, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of Subsection F of 20.11.60.12 NMAC) by a significant amount for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of Subsection F of 20.11.60.12 NMAC). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(a) the name, address and telephone number of the major stationary source;

(b) the annual emissions as calculated pursuant to Paragraph (3) of Subsection F of 20.11.60.12 NMAC; and

(c) any other information that the owner or operator wishes to include in the report, for example, an explanation as to why the emissions differ from the preconstruction projection.

G. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection F of 20.11.60.12 NMAC available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii). [20.11.60.12 NMAC - N, 1/23/06]

20.11.60.13 SOURCE OBLIGATION:

A. The requirements of this 20.11.60 NMAC shall apply as though construction had not yet commenced at the time that a source or modification becomes a major source or major modification solely

due to a relaxation in any enforceable limitation established after August 7, 1980.

B. The issuance of a permit by the department shall not relieve any owner or operator of the responsibility to comply with the provisions of the Air Quality Control Act, Sections 74-2-1 to 74-2-17, NMSA 1978, any applicable regulations of the board, and any other requirements under local, state, or federal law.

C. Any owner or operator who commences construction or operates a major stationary source or major modification without, or not in accordance with, a permit issued under the requirements of 20.11.60 NMAC shall be subject to enforcement action.

D. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within 18 months of the projected and approved commencement date. The director may extend the 18-month period upon a satisfactory showing that an extension is justified.

E. For phased construction projects, the determination of the lowest achievable emission rate shall be reviewed and modified as appropriate at the latest reasonable time but no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate.

F. If the owner or operator previously issued a permit under 20.11.60 NMAC applies for an extension as provided for under Subsection D of 20.11.60.13 NMAC, and the new proposed date of construction is greater than 18 months from the date the permit would become invalid, the determination of lowest achievable emission rate shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate.
[20.11.60.13 NMAC - Rp, 20.11.60.12 NMAC, 1/23/06]

20.11.60.14 APPLICATION CONTENTS: The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required under 20.11.60 NMAC. The following items are required

before the department may deem an application administratively complete. All applications shall include:

A. all information required by Subsection A of 20.11.41.13 NMAC; and

B. a detailed schedule for construction of the major stationary source or major modification; and

C. a detailed description of the planned system of continuous emission reduction to be implemented, emission estimates, and other information necessary to demonstrate that the lowest achievable emission rate or any other applicable emission limitation will be maintained.

[20.11.60.14 NMAC - Rp, 20.11.60.13 NMAC, 1/23/06]

20.11.60.15 SOURCE REQUIREMENTS: In order for a permit to be granted, all of the following conditions shall be met.

A. The major stationary source or major modification shall be designed such that the lowest achievable emission rate (LAER) will be met and maintained for each pollutant emitted which is subject to 20.11.60 NMAC.

B. The owner or operator of the proposed new or modified source has demonstrated that all existing major stationary sources owned or operated by such person (or any entity controlling, controlled by, or under common control with such person) in this state are in compliance with, or on a schedule for compliance, with all applicable emission limitations and standards, under the federal Clean Air Act, and all conditions in a federally enforceable permit.

C. Emission Reductions:
(1) Emission reductions (offsets) at existing sources shall occur prior to or concurrent with the start of operation of the proposed major stationary source or major modification for each pollutant emitted which is subject to 20.11.60 NMAC. As a general rule, such offsets shall be at least 20 percent greater than the allowable emissions of the proposed new major stationary source or major modification, and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the same or other sources in the area. An offset less than 20 percent, but at least 10 percent, a 1.0:1.1 ratio may be allowed if reasonable progress toward the attainment of the applicable NAAQS will be achieved. A higher level of offset reduction may be required in order to demonstrate that a net air quality benefit will occur; or

(2) A new major stationary source or major modification which is subject to the requirements of Subsection D of

20.11.60.12 NMAC shall obtain sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major stationary source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard.

D. Emission offsets shall provide a net air quality benefit in the area where the national ambient air quality standard for that pollutant is violated; and

E. The owner or operator of the proposed major stationary source or major modification has conducted an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

F. The proposed major stationary source or major modification will meet all applicable emission requirements in the New Mexico state implementation plan, any applicable new source performance standard in 40 CFR Part 60, and any national emission standard for hazardous air pollutants in 40 CFR Part 61.

[20.11.60.15 NMAC - Rp, 20.11.60.14 NMAC, 1/23/06]

20.11.60.16 ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING MANDATORY FEDERAL CLASS I AREAS:

A. The requirements of 20.11.60.16 NMAC apply only to proposed major stationary sources or major modifications that meet the criteria of Paragraph (1) of Subsection A of 20.11.60.12 NMAC and that also are major stationary sources or major modifications as defined in 20.11.61 NMAC. A major stationary source or major modification which meets the criteria of Paragraph (2) of Subsection A of 20.11.60.12 NMAC may be subject to requirements for federal class I areas in 20.11.61 NMAC, if applicable.

B. The department shall transmit to the administrator and any affected federal land manager a copy of each permit application and any information relevant to any proposed major stationary source or major modification which may have an impact on visibility in any mandatory federal class I area. Relevant information will include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The application shall be transmitted within 30 days of receipt by the department and at least 60 days prior to any public hearing on the application. Additionally, the department shall notify any affected federal land man-

ager within 30 days from the date the department receives a request for a pre-application meeting from a proposed source subject to 20.11.60 NMAC. The department shall consult with the affected federal land manager prior to making a determination of completeness for any such permit application. The department shall also provide the federal land manager and the administrator with a copy of the preliminary determination on the permit application and shall make available to them any materials used in making that determination.

C. The owner or operator of any proposed major stationary source or major modification which may have an impact on visibility in a mandatory federal class I area shall include in the permit application an analysis of the anticipated impacts on visibility in such areas.

D. The department may require monitoring of visibility in any mandatory federal class I area where the department determines an adverse impact on visibility may occur due to the operations of the proposed new source or modification. Such monitoring shall be conducted following procedures approved by the department and subject to the following conditions:

(1) visibility monitoring methods specified by the department shall be reasonably available and not require any research and development; and

(2) both preconstruction and post construction visibility monitoring may be required. In each case, the duration of such monitoring shall not exceed one year.

E. The department shall consider any analysis with respect to visibility impacts provided by the federal land manager if it is received within 30 days from the date a complete application is given to the federal land manager. In any case where the department disagrees with the federal land manager's analysis, the department shall either explain its decision to the federal land manager or give notice as to where the explanation can be obtained. In the case where the department disagrees with the federal land manager's analysis, the department will also explain its decision or give notice to the public by means of an advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed as to where the decision can be obtained.

F. In making its determination as to whether or not to issue a permit, the department shall ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal of preventing any future impairment of visibility in mandatory federal class I areas. The department may take into account the costs of compliance, the time necessary for compliance, the energy and

non-air quality environmental impacts of compliance, and the useful life of the source.

[20.11.60.16 NMAC - Rp, 20.11.60.15 NMAC, 1/23/06]

20.11.60.17 EMISSION OFFSET

BASELINE: The baseline for determining credit for emission offsets shall be the most stringent emissions limitation pursuant to a New Mexico air quality regulation or federally enforceable permit which is applicable and in effect at the time the application to construct is filed. If neither a state air quality regulation nor a federally enforceable permit contains an emissions limitation for the source, the baseline shall be the actual emissions of the source from which offset credit is obtained. Where a source is subject to an emission standard established in a new source performance standard (NSPS) or a national emission standard for hazardous air pollutants (NESHAPs) and a different state implementation plan or permit limitation, including any emission limitation used in demonstrating reasonable further progress, the more stringent emission standard shall be used as the baseline for determining credit for emission offsets.

[20.11.60.17 NMAC - Rp, 20.11.60.16 NMAC, 1/23/06]

20.11.60.18 EMISSION OFF-

SETS: All emission offsets approved by the department shall meet the following criteria.

A. All emission reductions claimed as offset credit shall be from decreases of the same pollutant for which the offset is required.

B. All emission reductions claimed as offset credit shall occur prior to or concurrent with the start of operation of the proposed source. In addition, past reductions must have occurred later than the date upon which the area became nonattainment in order to be creditable.

C. For the case where emission reductions claimed as offset credit occur at the source subject to 20.11.60 NMAC, such reductions shall be a condition required by a federally enforceable permit. For the case where emission reductions claimed as offset credit occur at a neighboring source, such reductions shall be incorporated as modifications to pertinent federally enforceable permits held by the neighboring source. If the neighboring source has no relevant permits, the reductions shall be approved as a revision to the state implementation plan by the board.

D. Offset credit for any emissions reduction can be claimed only to the extent that the department or US EPA has not relied on it in previously issuing any permit or in demonstrating attainment or reasonable further progress.

E. No emissions reduction credit shall be allowed for replacing one volatile organic compound with another of lesser reactivity, except as approved by the US EPA reactivity guidance found at 42 FR 35314, (1977) and any amendments thereto.

F. Emission reduction credit may be allowed consistent with the provisions found in 40 CFR 51.165(a)(3)(ii)(C).

G. Where the most stringent emissions limit which is applicable allows greater emissions than the potential to emit of the offsetting source, emission offset credit will be allowed only for control below the potential to emit of the source.

H. The emission limit for determining emission offset credit involving an existing fuel combustion source shall be the most stringent emission standard which is applicable for this source for the type of fuel being burned at the time the permit application is filed. If the existing source commits to switch to a cleaner fuel, emission offset credit based on the difference between the allowable emissions of the fuels involved shall be acceptable only if an alternative control measure, which would achieve the same degree of emission reduction should the source switch back to a fuel which produces more pollution, is specified in a permit issued by the department.

I. The owner or operator desiring to utilize an emission reduction as an offset shall submit to the department the following information:

(1) a detailed description of the process to be controlled and the control technology to be used; and

(2) emission calculations showing the types and amounts of actual emissions to be reduced; and

(3) the effective date of the reduction.

J. Source shutdowns and curtailments in production or operating hours may be used for emission offset credit only if they occur after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source for which the offset is to apply is a replacement for the shutdown or curtailment.

K. The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

[20.11.60.18 NMAC - Rp, 20.11.60.17 NMAC, 1/23/06]

20.11.60.19 BANKING OF EMISSION REDUCTION:

A. Any stationary source which decreases actual emissions of a regulated new source review pollutant in excess of the requirements of 20.11.60 NMAC or any other applicable air quality regulation or permit emission limitation may preserve or bank such excess emission reductions for sale or future use.

B. The owner or operator desiring to preserve such reductions shall submit a written request prior to the actual emission reduction to the department which contains the following information:

(1) a detailed description of the process(es) to be controlled and the control technology to be used; and

(2) emission calculations showing the types and amounts of actual emissions to be reduced; and

(3) the effective date(s) of such reductions.

C. The department shall:

(1) verify the amount of emission reduction claimed in the written request; and

(2) approve or deny the request for banking of the emission reduction and notify the applicant in writing of the decision; and

(3) keep appropriate records of any emission reduction accepted for banking; and

(4) for the case where emission reductions are approved in excess of those required for obtaining a permit under 20.11.60 NMAC, the department shall make such reductions a condition of the permit; and

(5) for the case where emission reductions are approved not in conjunction with granting a permit, the department shall preserve such reductions as a state implementation plan revision which must be approved by the board.

D. Use and Sale of Emission Reductions.

(1) The use of any preserved emission reduction is confined to meeting the emission offset requirements of 20.11.60 NMAC or 20.11.41 NMAC.

(2) The provisions of 20.11.60 NMAC apply to the future use of any preserved emission reduction as if such reductions were obtained concurrently with the commencement of operations of the new or modified source.

(3) Before the use or sale of any preserved emission reduction occurs, written notification must be given to the department. Such notice shall be in writing and shall identify the permit(s) and state implementation plan revision(s) in which such reductions are preserved. The department must verify the availability of the preserved reduction before any use or sale occurs.

(4) The use of preserved emission

reduction credits is subject to the criteria of 20.11.60.18 NMAC, Emission Offsets.

[20.11.60.19 NMAC - Rp, 20.11.60.18 NMAC, 1/23/06]

20.11.60.20 AIR QUALITY BENEFIT: All demonstrations of the occurrence of a net air quality benefit shall meet the following criteria.

A. Emission offsets for volatile organic compounds or nitrogen oxides emissions impacting an ozone nonattainment area may be obtained from sources located in the broad vicinity of the proposed new source or modification, subject to approval by the department. Atmospheric dispersion modeling will not be required to demonstrate the net air quality benefit that occurs due to reductions in volatile organic compound emissions.

B. An applicant which proposes emission offsets for sulfur dioxide, particulate matter, carbon monoxide, nitrogen oxides, or any other pollutant may be required by the department to submit atmospheric dispersion modeling to demonstrate a net air quality benefit will occur. For any case involving these pollutants where stack emissions and fugitive or ground level emissions are offsetting, atmospheric dispersion modeling shall be required to demonstrate a net air quality benefit will occur.

[20.11.60.20 NMAC - Rp, 20.11.60.19 NMAC, 1/23/06]

20.11.60.21 PUBLIC PARTICIPATION AND NOTIFICATION:

A. The department shall, within 30 days after its receipt of an application for a permit or significant permit revision subject to 20.11.60 NMAC, review such application and determine whether it is administratively complete. If the application is deemed:

(1) administratively complete, a letter to that effect shall be sent by certified mail to the applicant;

(2) administratively incomplete, a letter shall be sent by certified mail to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete; upon receipt of the additional information or clarification, the department shall promptly review such information and determine whether the application is administratively complete;

(3) administratively complete but no permit is required, a letter shall be sent by certified mail to the applicant informing the applicant of the determination.

B. The department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or dis-

approved.

(2) Make available at the department, district and local office nearest to the proposed source a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed major stationary source or major modification would be constructed, of the application, the preliminary determination, and of the opportunity for comment at a public hearing as well as written public comment. The public comment period shall be for 45 days from the date of such advertisement.

(4) Send a copy of the notice of public comment to the applicant, the administrator, and to officials and agencies having jurisdiction over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies, the chief executives of the city and county where the source would be located, any regional comprehensive land use planning agency, and any state, federal land manager, or indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source and other appropriate considerations. Public hearings shall be held in the geographic area likely to be impacted by the source.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection in the same locations where the department made available preconstruction information relating to the source.

(7) Within 90 days after the application is deemed administratively complete, unless the director grants an extension, not to exceed 90 days for good cause:

(a) make a final determination whether construction should be approved, approved with conditions, or disapproved, or whether no permit is required; and

(b) notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the department made available preconstruction information and public comments relating to the source. [20.11.60.21 NMAC - Rp, 20.11.60.20 NMAC, 1/23/06]

A. Significant Ambient Concentrations:

Pollutant	Concentration in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) or milligrams per cubic meter (mg/m^3)				
	Averaging Time				
	Annual	24-hr	8-hr	3-hr	1-hr
Sulfur Dioxide	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	25 $\mu\text{g}/\text{m}^3$	--
PM ₁₀	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	--	--
Nitrogen Dioxide	1.0 $\mu\text{g}/\text{m}^3$	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m^3	--	2 mg/m^3

B. Fugitive emissions source categories:

- (1) carbon black plants (furnace process);
- (2) charcoal production plants;
- (3) chemical process plants;
- (4) coal cleaning plants (with thermal dryers);
- (5) coke oven batteries;
- (6) fossil fuel-fired steam electric plants of more than 250 million Btu/hr heat input;
- (7) fossil fuel boiler (or combination thereof) totaling more than 50 million Btu/hr heat input;
- (8) fuel conversion plants;
- (9) glass fiber processing plants;
- (10) hydrofluoric acid plants;
- (11) iron and steel mill plants;
- (12) kraft pulp mills;
- (13) lime plants;
- (14) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (15) nitric acid plants;
- (16) petroleum refineries;
- (17) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (18) phosphate rock processing plants;
- (19) portland cement plant;
- (20) primary lead smelters;
- (21) primary zinc smelters;
- (22) primary aluminum ore reduction plants;
- (23) primary copper smelters;
- (24) secondary metal production plants;
- (25) sintering plants;
- (26) sulfur recovery plants;
- (27) sulfuric acid plants;
- (28) taconite ore processing plants.

[20.11.60.22 NMAC - Rp, 20.11.60.21 & NMAC 20.11.60.22 NMAC, 1/23/06]

20.11.60.23 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALS)**A. Applicability.**

(1) The department may approve the use of an actuals PAL for any existing major stationary source (except as provided in Paragraph (2) of Subsection A of 20.11.60.23 NMAC) if the PAL meets the requirements of 20.11.60.23 NMAC. The term "PAL" shall mean "actuals PAL" throughout 20.11.60.23 NMAC.

(2) Actuals PALs shall not be allowed for VOC or NO_x for any major stationary source located in an extreme ozone nonattainment area.

(3) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of 20.11.60.23 NMAC, and complies with the PAL permit:

- (a) is not a major modification for the PAL pollutant;
- (b) does not have to be approved through the requirements of 20.11.60 NMAC; and
- (c) is not subject to the provisions in 20.11.60.13 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major new source review program).

(4) Except as provided under Subparagraph (c) of Paragraph (3) of Subsection A of 20.11.60.23 NMAC, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions. When a term is not defined in Subsection B of 20.11.60.23 NMAC, it shall have the meaning given in 20.11.60.7 NMAC or in 20.11.1 NMAC.

(1) **Actuals PAL for a major stationary source** means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(2) **Allowable emissions** means "allowable emissions" as defined in Subsection D of 20.11.60.7 NMAC, except as this definition is modified according to the following.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in Subsection EE of 20.11.60.7 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(3) **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection MM of 20.11.60.7 NMAC or in the federal Clean Air Act, whichever is lower.

(4) **Major emissions unit** means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the federal Clean Air Act for nonattainment areas. For example, in accordance with the definition of major stationary source in Section 182 (c) of the federal Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(5) **Plantwide applicability limitation (PAL)** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source that is enforceable as a practical matter and established source-wide in accordance with 20.11.60.23 NMAC.

(6) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) **PAL effective period** means the period beginning with the PAL effective date and ending 10 years later.

(8) **PAL major modification** means, notwithstanding the definitions for major modification and net emissions increase in 20.11.60.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) **PAL permit** means the minor NSR permit, major NSR permit under the requirements of 20.11.41 NMAC, 20.11.60 NMAC, and 20.11.61 NMAC, or the state title V permit under the requirements of 20.11.42 issued by the department that establishes a PAL for a major stationary source.

(10) **PAL pollutant** means the

pollutant for which a PAL is established at a major stationary source.

(11) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection MM of 20.11.60.7 NMAC or in the federal Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of Subsection B of 20.11.60.23 NMAC.

C. Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval:

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit.

(2) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of 20.11.60.23 NMAC.

D. General requirements for establishing PALs.

(1) A PAL at a major stationary source may be allowed by the department, provided that at a minimum, the following requirements are met.

(a) The PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of 20.11.60.23 NMAC.

(c) The PAL permit shall contain all the requirements of Subsection G of 20.11.60.23 NMAC.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsection L through N of 20.11.60.23 NMAC for each emissions unit under the PAL through the PAL effective period.

(2) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 20.11.60.18 NMAC unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

E. Public participation requirement for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department shall address all material comments before taking final action on the permit.

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of Subsection F of 20.11.60.23 NMAC, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in 20.11.60.7 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection UU of 20.11.60.23 NMAC or under the federal Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this

24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of Subsection F of 20.11.60.23 NMAC, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

G. Contents of the PAL permit. The PAL permit shall contain, at a minimum, all of the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Subsection J of 20.11.60.23 NMAC before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of Subsection I of 20.11.60.23 NMAC.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of 20.11.60.23 NMAC.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Subsection L of 20.11.60.23 NMAC.

(8) A requirement to retain the records required under Subsection M of 20.11.60.23 NMAC on site. Such records

may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of 20.11.60.23 NMAC by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

H. PAL effective period and reopening of the PAL permit.

(1) **PAL effective period.** The permit shall specify a PAL effective period of 10 years.

(2) **Reopening of the PAL permit.**

(a) During the PAL effective period, the department shall reopen the PAL permit to correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL; reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 20.11.60.18 NMAC; or revise the PAL to reflect an increase in the PAL as provided under Subsection K of 20.11.60.23 NMAC.

(b) The department may reopen the PAL permit to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date; to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source under this Part; or to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Subparagraph (a) of Paragraph (2) of Subsection H of 20.11.60.23 NMAC for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Subsection E of 20.11.60.23 NMAC.

I. Expiration of a PAL.

Any PAL which is not renewed in accordance with the procedures in Subsection J of 20.11.60.23 NMAC shall expire at the end of the PAL effective period, and the following requirements shall apply.

(1) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

(a) Within the time frame speci-

fied for PAL renewals in Paragraph (2) of Subsection J of 20.11.60.23 NMAC, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of 20.11.60.23 NMAC, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (a) of Paragraph (1) of Subsection I of 20.11.60.23 NMAC, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major new source review requirements if such change meets the definition of major modification in 20.11.60.7 NMAC.

(5) The major stationary source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 20.11.60.12 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (3) of Subsection A of 20.11.60.23 NMAC.

J. Renewal of a PAL.

(1) The department shall follow the procedures specified in Subsection E of 20.11.60.23 NMAC in approving any request to renew a PAL for a major stationary source, and shall provide both the pro-

posed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(2) **Application deadline.** A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(3) **Application requirements.** The application to renew a PAL permit shall contain the following information.

(a) The information required in Paragraphs (1) through (3) of Subsection C of 20.11.60.23 NMAC.

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL, with supporting documentation.

(d) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(4) **PAL adjustment.** In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraph (a) of Paragraph (4) of Subsection J of 20.11.60.23 NMAC. However, in no case may any such adjustment fail to comply with Subparagraph (b) of Paragraph (4) of Subsection J of 20.11.60.23 NMAC. If the emissions level calculated in accordance with Subsection F of 20.11.60.23 NMAC is equal to or greater than 80 percent of the PAL level, the department may:

(a) renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of Paragraph (4) of Subsection J of 20.11.60.23 NMAC; or

(b) set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale;

(c) notwithstanding Paragraph (4) of Subsection J of 20.11.60.23 NMAC, if the potential to emit of the major stationary

source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Subsection K of 20.11.60.23 NMAC - Increasing a PAL.

(5) If the compliance date for a New Mexico or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

K. Increasing a PAL during the PAL effective period.

(1) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

(a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator shall obtain a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of Paragraph (1) of Subsection K of 20.11.60.23 NMAC, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they

have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of Subsection K of 20.11.60.23 NMAC), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of 20.11.60.23 NMAC.

L. Monitoring requirements for PALs.

(1) General Requirements.

(a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Subparagraphs (a) through (d) of Paragraph (2) of Subsection L of 20.11.60.23 NMAC and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of Paragraph (1) of Subsection L of 20.11.60.23 NMAC, the owner or operator may also employ an alternative monitoring approach that meets Subparagraph (a) of Paragraph (1) of Subsection L of 20.11.60.23 NMAC if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of 20.11.60.23 NMAC renders the PAL invalid.

(2) **Minimum performance requirements for approved monitoring approaches.** The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of Subsection L of 20.11.60.23 NMAC:

(a) mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

(3) Mass balance calculations.

An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(4) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(b) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(5) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(6) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) The emissions unit shall operate within the designated range of use for

the emission factor, if applicable; and

(c) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the department determines that testing is not required.

(7) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of Subsection L of 20.11.60.23 NMAC, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(a) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(9) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

M. Record keeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of 20.11.60.23 NMAC and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

(2) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:

(a) A copy of the PAL permit application and any applications for revisions to the PAL; and

(b) Each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the

department in accordance with the requirements of 20.11.42 NMAC. The reports shall meet the following requirements.

(1) Semi-Annual Report. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information.

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of 20.11.60.23 NMAC.

(c) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(d) A list of any emissions units modified or added to the major stationary source during the preceding six-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of 20.11.60.23 NMAC.

(g) A signed statement by the responsible official as defined by 20.11.42.7 NMAC certifying the truth, accuracy, and completeness of the information provided in the report.

(2) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(a) The identification of owner and operator and the permit number;

(b) The PAL requirement that experienced the deviation or that was exceeded;

(c) Emissions resulting from the deviation or the exceedance; and

(d) A signed statement by the responsible official as defined by 20.11.42 NMAC certifying the truth, accuracy, and completeness of the information provided in the report.

(3) Revalidation results. The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

O. Transition requirements.

(1) The department shall not issue a PAL that does not comply with the requirements of 20.11.60.23 NMAC after the administrator has approved these regulations.

(2) The department may supersede any PAL which was established prior to the date of approval of 20.11.60 NMAC by the administrator with a PAL that complies with the requirements of this section. [20.11.60.23 NMAC - N, 1/23/06]

HISTORY OF 20.11.60 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.

Regulation No. 32, Construction Permits - Nonattainment Areas, 4/25/85;
Regulation No. 32, Construction Permits - Nonattainment Areas, 6/18/86;
Regulation No. 32, Construction Permits - Nonattainment Areas, 3/16/89;
Regulation No. 32, Construction Permits - Nonattainment Areas, 2/26/93.

History of Repealed Material: 20.11.60 NMAC, Permitting In Nonattainment Areas (filed 8/30/02) repealed 1/23/06.

Other History: Regulation No. 32, Construction Permits - Nonattainment Areas, filed 2/26/93 was **renumbered** and **reformatted** into first version of the New Mexico Administrative Code as 20 NMAC 11.60, Permitting In Nonattainment Areas, filed 10/27/95.

20 NMAC 11.60, Permitting In Nonattainment Areas, filed 10/27/95 was **renumbered, reformatted, amended and replaced** by 20.11.60 NMAC, Permitting In Nonattainment Areas, effective 10/1/02.

20.11.60 NMAC, Permitting In Nonattainment Areas (filed 8/30/02) was replaced by 20.11.60 NMAC, Permitting In Nonattainment Areas, effective 1/23/06.

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

TITLE 20 ENVIRONMENTAL PROTECTION

CHAPTER 11 ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

PART 61 PREVENTION OF SIGNIFICANT DETERIORATION

20.11.61.1 ISSUING AGENCY: Albuquerque-Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[20.11.61.1 NMAC - Rp, 20.11.61.1 NMAC, 1/23/06]

20.11.61.2 SCOPE: Any person constructing any new major stationary source or major modification, as defined in 20.11.61 NMAC, that emits or will emit regulated new source review pollutants in an attainment or unclassifiable area shall obtain a permit from the department in accordance with the requirements of 20.11.41 NMAC, Authority-to-Construct, and 20.11.61 NMAC prior to the construction or modification.

A. Exempt:

(1) Sources within Bernalillo County which are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction;

(2) Each regulated new source review pollutant emitted in a nonattainment area for that pollutant;

(3) After a public hearing, consistent with the public notice and participation provisions of 20.11.41 NMAC, Authority-to-Construct, the board may exempt major stationary sources or major modifications that are part of nonprofit health or nonprofit educational institutions; or

(4) A portable stationary source which has previously received a permit pursuant to 20.11.61 NMAC; and

(a) The owner or operator proposes to relocate the source, and emissions from the source at the new location will be temporary; and

(b) The emissions from the source would not exceed its allowable emission rate; and

(c) The emissions from the source would not impact any federal class I area nor any area where an applicable increment is known to be violated; and

(d) Reasonable notice is given to the department prior to the relocation identifying the proposed new location and prob-

able duration of operation at the new location. Such notice shall be given to the department not less than 10 days in advance of the proposed relocation unless a different time interval is previously approved by the department;

(5) Sources or modifications that would be major only if quantifiable fugitive emissions are considered in calculating the potential to emit or net emissions increase, and the source does not belong to:

(a) any category in Table 1 of 20.11.61.26 NMAC; or

(b) any other stationary source category which on or after August 7, 1980, is being regulated under Section 111 or 112 of the Act.

B. Variances: The director may grant a variance to any person constructing a major stationary source or major modification from the federal class I maximum allowable increases consistent with the requirements listed in 40 CFR 52.21(p)(5).

[20.11.61.2 NMAC - Rp, 20.11.61.2 NMAC, 1/23/06]

20.11.61.3 STATUTORY

AUTHORITY: 20.11.61 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4 and 74-2-5; the Joint Air Quality Control Board Ordinance; Bernalillo county Ordinance No. 94-5, Sections 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4.

[20.11.61.3 NMAC - Rp, 20.11.61.3 NMAC, 1/23/06]

20.11.61.4 DURATION :

Permanent.

[20.11.61.4 NMAC - Rp, 20.11.61.4 NMAC, 1/23/06]

20.11.61.5 EFFECTIVE DATE:

January 23, 2006, unless a later date is cited at the end of a section or paragraph.

[20.11.61.5 NMAC - Rp, 20.11.61.5 NMAC, 1/23/06]

20.11.61.6 OBJECTIVE:

The objective of 20.11.61 NMAC is to minimize air pollutant emissions from new major stationary sources or major modifications in areas classified as in attainment of the national ambient air quality standards or determined to be unclassifiable pursuant to Section 107(d) of the Act.

[20.11.61.6 NMAC - Rp, 20.11.61.6 NMAC, 1/23/06]

20.11.61.7 DEFINITIONS:

In addition to the definitions in 20.11.61 NMAC, the definitions in 20.11.1 NMAC,

General Provisions, shall apply unless there is a conflict between definitions, in which case the definition in 20.11.61 NMAC shall govern.

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

B. "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with Paragraphs (2) through (4) of Subsection B of 20.11.61.7 NMAC.

(1) This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 20.11.61.20 NMAC. Instead, Subsections I and UU of 20.11.61.7 NMAC shall apply for those purposes.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(3) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

C. "Administrator" means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

D. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with the following:

(1) Times of visitor use of the federal class I area; and

(2) The frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

E. "Air quality related values (AQRV)" means visibility and other scenic, cultural, physical, biological, eco-

logical, or recreational resources which may be affected by a change in air quality resulting from the emissions of a proposed major stationary source or major modification that interferes with the management, protection, preservation, or enjoyment of the air quality related values of a federal class I area.

F. "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) The applicable standards as set forth in 40 CFR Parts 60 and 61;

(2) The applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

G. "Associated Emission Sources" means secondary emissions and all reasonably foreseeable emissions of regulated pollutants from the growth of general residential, commercial, industrial, governmental emission sources and other mobile and non-mobile emission sources which are associated with and/or support the proposed new major stationary source or major modification. Other mobile and non-mobile emission sources shall include, but not be limited to, new highways and roads or improvements to existing highways and roads to increase capacity, new parking facilities or improvements to existing parking facilities to increase capacity, service enhancements to ground and air public transportation to include the building of new public transportation facilities or improvements to existing public transportation facilities to increase capacity; and the building of new public or private educational facilities or improving existing public or private educational facilities to increase enrollment.

H. "Attainment area" means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling not to exceed any national ambient air quality standard for such pollutant, and is so designated under Section 107(d)(1)(D) or (E) of the Act.

I. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following:

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-

month period selected by the owner or operator within the five year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with start-ups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of Paragraph (1) of Subsection I of 20.11.61.7 NMAC.

(2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10 year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under 20.11.61 NMAC or under a plan approved by the administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with start-ups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to

comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (2) of Subsection I of 20.11.61.7 NMAC.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of Subsection I of 20.11.61.7 NMAC, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of Subsection I of 20.11.61.7 NMAC, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of Subsection I of 20.11.61.7 NMAC.

J. "Baseline area" means all lands designated as attainment or unclassifiable in which the major source or major modification would construct or would have an air quality impact equal to or greater than one microgram per cubic meter ($1 \text{ } \mu\text{g}/\text{m}^3$ (annual average) of the pollutant for which the minor source baseline date is established. The major source or major modification establishes the minor source baseline date. Lands are designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the Act within each federal air quality control region in the state of New Mexico. Any baseline area established originally for total suspended particulates (TSP) increments shall remain in effect and shall apply for purposes of deter-

mining the amount of available PM_{10} increments. A TSP baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date.

K. "Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(1) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) the actual emissions shall be representative of sources in existence on the applicable minor source baseline date, except as provided in Paragraph (2) of Subsection K of 20.11.61.7 NMAC;

(b) the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

L. "Begin actual construction" means, in general, the initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

M. "Best available control technology (BACT)" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification, which the director determines is achievable on a case-by-case basis. This determination will take into account energy, environmental, and economic impacts and other costs. The determination must be achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutants. In no event shall application of

best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

N. "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same first two-digit code) as described in the Standard Industrial Classification (SIC) Manual, 1972, as amended by the 1977 supplement (U. S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively) or any superseding SIC manual.

O. "Class I area" means any federal land that is classified or reclassified as "class I" as listed in 20.11.61.25 NMAC.

P. "Commence" means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary pre-construction approvals or permits and has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake and complete, within a reasonable time, a program of actual construction.

Q. "Complete" means, in reference to an application for a permit that the department has determined the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

R. "Construction" means

any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

S. "Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of 20.11.61 NMAC, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

T. "Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

U. "Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of 20.11.61 NMAC, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

V. "Department" means the city of Albuquerque, environmental health department or its successor agency.

W. "Director" means the director of the city of Albuquerque, environmental health department or the director of its successor agency.

X. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

Y. "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric utility steam generating unit as defined in 20.11.61.7 NMAC. For purposes of Subsection Y of 20.11.61.7 NMAC, there are two types of emissions units as described.

(1) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.

(2) An existing emissions unit is

any emissions unit that does not meet the requirements in Paragraph (1) of Subsection Y of 20.11.61.7 NMAC. A replacement unit is an existing unit.

Z. "Federal land manager" means, with respect to any lands in the United States, a federal level cabinet secretary of a federal level department (e.g. interior department) with authority over such lands.

AA. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including:

(1) those requirements developed pursuant to 40 CFR Parts 60 and 61;

(2) requirements within any applicable state implementation plan (SIP);

(3) any permit requirements established pursuant to 40 CFR 52.21; or

(4) under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

BB. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

CC. "High terrain" means any area having an elevation 900 feet or more above the base of a source's stack.

DD. "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

EE. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice. But such system would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

FF. "Low terrain" means any area other than high terrain.

GG. "Lowest achievable emission rate (LAER)" means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions

rate for the new or modified emissions units within the stationary source; in no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

HH. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated new source review pollutant, and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds oxides of nitrogen shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source;

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan for the state in

which the project is located; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated new source review pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(j) the reactivation of a very clean coal-fired electric utility steam generating unit.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.11.61.20 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.11.61.20 NMAC shall apply.

II. "Major source baseline date" means:

(1) in the case of particulate matter and sulfur dioxide, January 6, 1975; and

(2) in the case of nitrogen dioxide, February 8, 1988.

JJ. "Major stationary source" means:

(1) any stationary source listed in Table 1 of 20.11.61.26 NMAC which emits, or has the potential to emit, emissions equal to or greater than 100 tons per year of any regulated new source review pollutant; or

(2) any stationary source not listed in Table 1 of 20.11.61.26 NMAC and which emits or has the potential to emit 250 tons per year or more of any regulated new source review pollutant; or

(3) any physical change that would occur at a stationary source not otherwise qualifying under Paragraphs (1) or (2) of Subsection JJ of 20.11.61.7 NMAC if the change would constitute a major stationary source by itself;

(4) a major source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone;

(5) the fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 of 20.11.61.26 NMAC or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

KK. "Mandatory federal class I area" means any area identified in 40 CFR Part 81, Subpart D.

LL. "Minor source baseline date" means the earliest date after the

trigger date on which a major stationary source or major modification subject to 40 CFR 52.21, or 20.11.61 NMAC, submits a complete application.

(1) The trigger dates are:

(a) August 7, 1977, for particulate matter and sulfur dioxide, and

(b) February 8, 1988 for nitrogen dioxide.

(2) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(a) the area in which the proposed major stationary source or major modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Act for the pollutant on the date the application is determined to be complete, consistent with 40 CFR 51.21 or 20.11.61 NMAC, and

(b) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(4) Any minor source baseline date established originally for the TSP increment shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments. The department may rescind any TSP minor source baseline date if it can be shown, to the director's satisfaction that, either the emissions increase from the major stationary source, or the net emissions increase from the major modification responsible for triggering the minor source baseline date did not result in a significant amount of PM₁₀ emissions.

MM. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

NN. "Necessary preconstruction approvals or permits" mean those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

OO. "Net emissions increase" means, with respect to any regulated new source review pollutant emitted by a major stationary source, the following.

(1) The amount by which the sum of the following exceeds zero.

(a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection D of 20.11.61.11 NMAC; and

(b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise

creditable. Baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection I of 20.11.61.7 NMAC, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection I of 20.11.61.7 NMAC shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

(b) the department has not relied on it in issuing a permit for the source under regulations approved pursuant to 20.11.61 NMAC and is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or oxides of nitrogen that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) Paragraph (2) of Subsection B of 20.11.61.7 NMAC shall not apply for determining creditable increases and

decreases.

PP. "Nonattainment area" means an area which has been designated under Section 107 of the Act as nonattainment for one or more of the national ambient air quality standards by EPA.

QQ. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly.

RR. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollutant control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect the limitation would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

SS. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

TT. "Project" means a physical change in, or change in method of operation of, an existing major stationary source.

UU. "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated new source review pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under an approved SIP; and

(2) shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection I of 20.11.61.7 NMAC and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of Subsection UU of 20.11.61.7 NMAC, may elect to use the emissions unit's potential to emit in tons per year.

VV. "Regulated new source review pollutant" means the following:

(1) any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds and oxides of nitrogen are precursors for ozone);

(2) any pollutant that is subject to any standard promulgated under Section 111 of the Act;

(3) any class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(4) any pollutant that otherwise is subject to regulation under the Act; except that any or all hazardous air pollutants either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act, which have not been delisted pursuant to Section 112(b)(3) of the Act, are not regulated new source review pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

WW. "Replacement unit" means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is

permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

XX. "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of Subsection XX of 20.11.61.7 NMAC, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

YY. "Significant" means in reference to a net emissions increase or the potential of a source to emit air pollutants, a rate of emission that would equal or exceed any of the rates listed in Table 2 of 20.11.61.27 NMAC.

ZZ. "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant for that pollutant.

AAA. "Stationary source" means any building, structure, facility, or installation which emits, or may emit, any regulated new source review pollutant.

BBB. "Temporary source" means a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations.

CCC. "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

DDD. "Volatile organic compound (VOC)" means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity.

[20.11.61.7 NMAC - Rp, 20.11.61.7 NMAC, 1/23/06]

20.11.61.8 SAVINGS CLAUSE: Any amendment to 20.11.61 NMAC, Prevention of Significant Deterioration that is filed with the state records center and

archives shall not affect actions pending for violation of a city or county ordinance or board regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or section in effect at the time the violation was committed.

[20.11.61.8 NMAC - Rp, 20.11.61.9 NMAC, 1/23/06]

20.11.61.9 SEVERABILITY: If any section, paragraph, sentence, clause, or word of 20.11.61 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.61 NMAC.

[20.11.61.9 NMAC - Rp, 20.11.61.10 NMAC, 1/23/06]

20.11.61.10 DOCUMENTS: Documents incorporated and cited in 20.11.61 NMAC may be viewed at the Albuquerque environmental health department, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102.

[20.11.61.10 NMAC - Rp, 20.11.61.11 NMAC, 1/23/06]

20.11.61.11 APPLICABILITY:

A. The requirements of 20.11.61 NMAC apply to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment or unclassifiable.

B. The requirements of Sections 20.11.61.12 NMAC through 20.11.61.18 NMAC, 20.11.61.21 NMAC and 20.11.61.24 NMAC apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as 20.11.61 NMAC otherwise provides.

C. No new major stationary source or major modification to which the requirements of Subsections A, B, C and D of 20.11.61.12 NMAC, Sections 20.11.61.13 NMAC through 20.11.61.18 NMAC, 20.11.61.21 NMAC and 20.11.61.24 NMAC apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

D. Applicability procedures.

(1) Except as otherwise provided in Subsections E and F of 20.11.61.11 NMAC, and consistent with the definition of major modification, a project is a major modification for a regulated new source review pollutant if it causes a significant net emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a

significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) through (4) of Subsection D of 20.11.61.11 NMAC. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in Subsection OO of 20.11.61.7 NMAC. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

(4) Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

E. For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.11.61.20 NMAC.

[20.11.61.11 NMAC - N, 1/23/06]

20.11.61.12 OBLIGATIONS OF OWNERS OR OPERATORS OF SOURCES:

A. Any owner or operator who begins actual construction or operates a source or modification without, or not in accordance with, a permit issued under the requirements of 20.11.61 NMAC shall be subject to enforcement action.

B. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, Sections 74-2-1 to 74-2-17, NMSA 1978; any applicable regulations of the board; and

any other requirements under local, state, or federal law.

C. Approval to construct shall become invalid if:

(1) construction is not commenced within 18 months after receipt of such approval;

(2) if construction is discontinued for a period of 18 months or more; or

(3) if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within 18 months of the projected and approved commencement date. The director may extend the 18 month period upon a satisfactory showing that an extension is justified.

D. If a source or modification becomes a major stationary source or major modification solely due to a relaxation in any enforceable limitation (which limitation was established after August 7, 1980), on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then 20.11.61 NMAC shall apply to the source or modification as though construction had not yet commenced.

E. The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection UU of 20.11.61.7 NMAC for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) a description of the project;

(b) identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection UU of 20.11.61.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of Subsection E of 20.11.61.12 NMAC to the department. Nothing in this Paragraph (2) of Subsection E of 20.11.61.12 NMAC shall be construed to require the owner or operator of such a unit to obtain any deter-

mination from the department; however, necessary preconstruction approvals and/or permits must be obtained before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Subparagraph (b) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Subparagraph (c) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of Subsection E of 20.11.61.12 NMAC, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC) by a significant amount for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(a) the name, address and telephone number of the major stationary source;

(b) the annual emissions as calculated pursuant to Paragraph (3) of Subsection E of 20.11.61.12 NMAC; and

(c) any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

F. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection E of 20.11.61.12 NMAC available for review upon request

for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

[20.11.61.12 NMAC - Rp, 20.11.61.12 NMAC, 1/23/06]

20.11.61.13 SOURCE INFORMATION: The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required by 20.11.61 NMAC.

A. Information shall include, but is not limited to:

(1) a description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing the design and plant layout; and

(2) a detailed schedule of construction of the source or modification; and

(3) a detailed description of the planned system of continuous emission reduction for the source or modification, emission estimates, and other information necessary to determine that best available control technology will be applied.

B. Upon request by the department, the owner or operator shall also provide information on:

(1) The air quality impact of the source or modification, including meteorological and topographic data necessary to estimate such impact; and

(2) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977 in the area the source or modification would affect.

[20.11.61.13 NMAC - Rp, 20.11.61.13 NMAC, 1/23/06]

20.11.61.14 CONTROL TECHNOLOGY REQUIREMENTS:

A. A new major stationary source shall apply best available control technology for each regulated new source review pollutant that it would have the potential to emit in amounts equal to or greater than the significance levels as listed in Table 2 of 20.11.61.27 NMAC. This requirement applies to each proposed emissions unit or operation that will emit such pollutant.

B. A major modification shall apply best available control technology for each regulated new source review pollutant at the source when a significant net emissions increase occurs. This requirement applies to each proposed emissions unit or operation where a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

C. For phased construction projects, the determination of best available

control technology shall be reviewed and modified as appropriate at the latest reasonable time but no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

D. The department may approve a system of innovative control technology for the major stationary source or major modification if:

(1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function; and

(2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under best available control technology by a date specified by the department. Such date shall not be later than four years from the time of startup or seven years from permit issuance; and

(3) The source or modification would meet the requirements of 20.11.61.14 NMAC and 20.11.61.15 NMAC based on the emission rate that the system of innovative control technology would be required to meet on the date specified by the department; and

(4) During the interim period of achieving the permitted emission level, the source or modification would not:

(a) cause or contribute to a violation of an applicable national ambient air quality standard; nor

(b) impact any federal class I area; nor

(c) impact any area where an applicable increment is known to be violated; and

(d) all other applicable requirements including those for public participation have been met.

E. The department shall withdraw any approval to employ a system of innovative control technology if:

(1) the proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(2) the proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(3) the department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

F. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with Subsection E of 20.11.61.14 NMAC, the department may

allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology. This shall be accomplished through use of a demonstrated system of control.

G. If the owner or operator of a major stationary source or major modification previously issued a permit under 20.11.61 NMAC applies for an extension, and the new proposed date of construction is greater than 18 months from the date the permit would become invalid, the determination of best available control technology shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

H. For cases where PM_{10} emissions cannot be quantified, the best available control technology limitation may be defined in terms of particulate matter emissions.
[20.11.61.14 NMAC - Rp, 20.11.61.14 NMAC, 1/23/06]

20.11.61.15 AMBIENT IMPACT REQUIREMENTS:

A. The requirements of 20.11.61.15 NMAC shall apply to each pollutant emitted by a new major stationary source or major modification in amounts equal to or greater than that in Table 2 of 20.11.61.27 NMAC. For particulate matter, the source will only be required to perform ambient impact analysis for PM_{10} when the source has the potential to emit significant amounts of PM_{10} as determined from Table 2 of 20.11.61.27 NMAC.

B. The allowable emission increases from the proposed source or modification, including secondary emissions, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

(1) any national ambient air quality standard in any location; or

(2) any applicable maximum allowable increase as shown in Table 4 of 20.11.61.29 NMAC over the baseline concentrations in any area.

C. The owner or operator of the proposed major stationary source or major modification shall demonstrate that neither a violation of Paragraph (1) or Paragraph (2) of Subsection B of 20.11.61.15 NMAC will occur.

[20.11.61.15 NMAC - Rp, 20.11.61.15 NMAC, 1/23/06]

20.11.61.16 ADDITIONAL IMPACT REQUIREMENTS:

A. The owner or operator of the proposed major stationary source or major modification shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value. The analysis can use data or information available from the department.

B. The owner or operator shall also provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

[20.11.61.16 NMAC - Rp, 20.11.61.16 NMAC, 1/23/06]

20.11.61.17 AMBIENT AIR QUALITY MODELING:

All estimates of ambient concentrations required by 20.11.61 NMAC shall be based on applicable air quality models, data bases, and other requirements as specified in Appendix W to 40 CFR Part 51, its revisions, or any superseding EPA document, and approved by the department. Where an air quality impact model specified in the Appendix W to 40 CFR Part 51 is inappropriate, the model may be modified or another model substituted. Any substitution or modification of a model must be approved by the department. Notification shall be given by the department of such a substitution or modification and the opportunity for public comment provided for in fulfilling the public notice requirements in Subsection B of 20.11.61.21 NMAC. The department will seek EPA approval of such substitutions or modifications.

[20.11.61.17 NMAC - Rp, 20.11.61.17 NMAC, 1/23/06]

20.11.61.18 MONITORING REQUIREMENTS:

A. Any application for a permit under 20.11.61 NMAC shall contain an analysis of ambient air quality. Air quality data can be that measured by the applicant or that available from a government agency in the area affected by the major stationary source or major modification. The analysis shall contain the following:

(1) for a major stationary source, each pollutant for which the potential to emit is equal to or greater than the significant emission rates as listed in Table 2 of 20.11.61.27 NMAC; or

(2) for a major modification, each pollutant that would result in a significant net emission increase.

B. If no national ambient air quality standard for a pollutant exists, and there is an acceptable method for monitoring that pollutant, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant.

C. Continuous air quality monitoring data shall be required for all pollutants for which a national ambient air quality standard exists. Such data shall be submitted to the department for at least the one year period prior to receipt of the permit application. The department has the discretion to:

(1) determine that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year but not less than four months; or

(2) determine that existing air quality monitoring data is representative of air quality in the affected area and accept such data in lieu of additional monitoring by the applicant.

D. Ozone monitoring shall be performed if monitoring data is required for volatile organic compounds or oxides of nitrogen. Post construction ozone monitoring data may be submitted in lieu of providing preconstruction data as required under Subsection C of 20.11.61.18 NMAC if the owner or operator of the proposed major source or major modification satisfies all the provisions of 40 CFR Part 51, Appendix S, Section IV.

E. The department may require monitoring of visibility in any federal class I area where the department determines that an adverse impact on visibility may occur due primarily to the operations of the proposed new source or modification. Such monitoring shall be conducted following procedures approved by the department and subject to the following:

(1) visibility monitoring methods specified by the department shall be reasonably available and not require any research and development; and

(2) the cost of visibility monitoring required by the department shall not exceed 50 percent of the cost of ambient monitoring required by 20.11.61 NMAC. If ambient monitoring is not required, the cost shall be estimated as if it were required for each pollutant to which 20.11.61 NMAC applies.

(3) both preconstruction and post construction visibility monitoring may be required. In each case, the duration of such monitoring shall not exceed one year.

F. The owner or operator of a major stationary source or major modification shall conduct post construction ambient monitoring as the department determines is necessary to validate attain-

ment of ambient air quality standards and to assure that increments are not exceeded.

G. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR 58, Appendix B during the operation of monitoring stations for purposes of satisfying the requirements of this 20.11.61 NMAC.

H. The department has the discretion to exempt a stationary source or modification from the requirements of 20.11.61.18 NMAC with respect to monitoring for a particular pollutant if the emissions of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, increases in ambient concentrations less than the levels listed in Table 3 of 20.11.61.28 NMAC.

I. The department shall exempt a stationary source or modification from the requirements of 20.11.61.18 NMAC with respect to preconstruction monitoring for a particular pollutant if:

(1) for ozone, volatile organic compound emissions and oxides of nitrogen are less than 100 tons per year; or

(2) the air pollutant is not a regulated new source review pollutant; or

(3) the existing ambient concentrations of the pollutant in the area affected by the source or modification are less than the concentrations listed in Table 3 of 20.11.61.28 NMAC.

[20.11.61.18 NMAC - Rp, 20.11.61.18 NMAC, 1/23/06]

20.11.61.19 TEMPORARY SOURCE EXEMPTIONS: The requirements of 20.11.61.16 NMAC and 20.11.61.18 NMAC shall not apply to a temporary source subject to 20.11.61 NMAC for a given pollutant if the allowable emissions of such pollutant would not impact any federal class I area or any areas where an applicable increment is violated and would be temporary.

[20.11.61.19 NMAC - Rp, 20.11.61.19 NMAC, 1/23/06]

20.11.61.20 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs)

A. Applicability.

(1) The department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements of 20.11.61.20 NMAC. The term "PAL" shall mean "actuals PAL" throughout 20.11.61.20 NMAC.

(2) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of 20.11.61.20 NMAC, and complies with the

PAL permit:

(a) is not a major modification for the PAL pollutant;

(b) does not have to be approved through the requirements of 20.11.61 NMAC; and

(c) is not subject to the provisions in Subsection D of 20.11.61.12 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major new source review program).

(3) Except as provided under Subparagraph (c) of Paragraph (1) of Subsection A of 20.11.61.20 NMAC, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions applicable to 20.11.61.20 NMAC.

(1) **Actuals PAL for a major stationary source** means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(2) **Allowable emissions** means "allowable emissions" as defined in Subsection F of 20.11.61.7 NMAC, except as this definition is modified in accordance with the following.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in Subsection RR of 20.11.61.7 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(3) **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection YY of 20.11.61.7 NMAC or in the Act, whichever is lower.

(4) Major emissions unit means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the Act for nonattainment areas. For example, in accordance with the definition of major stationary source in Section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50

or more tons of VOC per year.

(5) **Plantwide applicability limitation (PAL)** means an emission limitation expressed in tons-per-year, for a pollutant at a major stationary source that is enforceable as a practical matter and established source-wide in accordance with 20.11.61.20 NMAC.

(6) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) **PAL effective period** means the period beginning with the PAL effective date and ending 10 years later.

(8) **PAL major modification** means, notwithstanding the definitions for major modification and net emissions increase in 20.11.61.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) **PAL permit** means the major new source review permit, the minor new source review permit, or the State operating permit under a program that is approved into the SIP, or the title V permit issued by the department that establishes a PAL for a major stationary source.

(10) **PAL pollutant** means the pollutant for which a PAL is established at a major stationary source.

(11) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level as defined in Subsection YY of 20.11.61.7 NMAC or in the Act, whichever is lower for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of Subsection B of 20.11.61.20 NMAC.

C. Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval.

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and mal-

function.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subsection M of 20.11.61.20 NMAC.

D. General requirements for establishing PALs.

(1) The department may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met.

(a) The PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of 20.11.61.20 NMAC.

(c) The PAL permit shall contain all the requirements of Subsection G of 20.11.61.20 NMAC.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of 20.11.61.20 NMAC for each emissions unit under the PAL through the PAL effective period.

(2) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

E. Public participation

requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department must address all material comments before taking final action on the permit.

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of Subsection F of 20.11.61.20 NMAC, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection YY of 20.11.61.7 NMAC or under the Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of Subsection F of 20.11.61.20 NMAC, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

G. Contents of the PAL permit. The PAL permit shall contain, at a minimum, the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Subsection J of 20.11.61.20 NMAC before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of Subsection I of 20.11.61.20 NMAC.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection C of 20.11.61.20 NMAC.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Subsection M of 20.11.61.20 NMAC.

(8) A requirement to retain the records required under Subsection M of 20.11.61.20 NMAC on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of 20.11.61.20 NMAC by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

H. PAL effective period and reopening of the PAL permit.

(1) **PAL effective period.** The PAL effective period shall be ten years.

(2) **Reopening of the PAL permit.**

(a) During the PAL effective period, the department shall reopen the PAL permit to correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL; reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and revise the PAL to reflect an increase in the PAL as provided under Paragraph Subsection K of 20.11.61.20 NMAC.

(b) The department may reopen the PAL permit for the following to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date to reduce the PAL consistent with any

other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source under the plan; and to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related values (AQRV) that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Subparagraph (a) of Paragraph (2) of Subsection H of 20.11.61.20 NMAC for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of Subsection E of 20.11.61.20 NMAC.

I. Expiration of a PAL.

Any PAL that is not renewed in accordance with the procedures in Subsection J of 20.11.61.20 NMAC shall expire at the end of the PAL effective period, and the requirements in Subsection I of 20.11.61.20 NMAC shall apply.

(1) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in Paragraph (1) of Subsection I of 20.11.61.20 NMAC.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of 20.11.61.20 NMAC, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit, or each group of emissions units, if such a distribution is more appropriate as decided by the department, by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of 20.11.61.20 NMAC, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance

with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (b) of Paragraph (1) of Subsection I of 20.11.61.20 NMAC, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source will be subject to major new source review requirements if such change meets the definition of major modification in Subsection HH of 20.11.61.7 NMAC.

(5) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Subsection D of 20.11.61.12 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (2) of Subsection A of 20.11.61.20 NMAC.

J. Renewal of a PAL.

(1) The department shall follow the procedures specified in Subsection E of 20.11.61.20 NMAC in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(2) **Application deadline.** A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(3) **Application requirements.** The application to renew a PAL permit shall contain the following information.

(a) The information required in Subsection C of 20.11.61.20 NMAC.

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL,

with supporting documentation.

(d) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(4) **PAL adjustment.** In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraphs (a) and (b) of Paragraph (4) Subsection J of 20.11.61.20 NMAC. However, in no case may any such adjustment fail to comply with Subparagraph (c) of Paragraph 4 of Subsection J of 20.11.61.20 NMAC.

(a) If the emissions level calculated in accordance with Subsection F of 20.11.61.20 NMAC is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of Paragraph (4) of Subsection J of 20.11.61.20 NMAC; or

(b) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(c) Notwithstanding Subparagraphs (a) and (b) of Paragraph (4) of Subsection J of 20.11.61.20 NMAC, if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Subsection K of 20.11.61.20 NMAC.

(5) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

K. Increasing a PAL during the PAL effective period.

(1) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

(a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its

PAL.

(b) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator obtains a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of Paragraph (1) of Subsection B of 20.11.61.20 NMAC, regardless of the magnitude of the emissions increase resulting from them, that is, no significant levels apply. These emissions unit(s) shall comply with any emissions requirements resulting from the major new source review process, for example, BACT, even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of Subsection K of 20.11.61.20 NMAC), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of 20.11.61.20 NMAC.

L. Monitoring requirements for PALs.

(1) General requirements.

(a) **Each PAL permit must contain enforceable requirements for the monitoring system that accurately deter-**

mines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Paragraph (2) of Subsection L of 20.11.61.20 NMAC and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of Paragraph (1) of Subsection L of 20.11.61.20 NMAC, you may also employ an alternative monitoring approach that meets Subparagraph (a) of Paragraph (1) of Subsection L of 20.11.61.20 NMAC if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of 20.11.61.20 NMAC renders the PAL invalid.

(2) **Minimum performance requirements for approved monitoring approaches.** The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of Subsection L of 20.11.61.20 NMAC:

(a) mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

(3) **Mass balance calculations.** An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific

monitoring program to support another content within the range.

(4) **CEMS.** An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable performance specifications found in 40 CFR part 60, Appendix B; and

(b) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(5) **CPMS or PEMS.** An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(6) **Emission factors.** An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the department determines that testing is not required.

(7) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of Subsection L of 20.11.61.20 NMAC, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(a) Establish default value(s) for determining compliance with the PAL based

on the highest potential emissions reasonably estimated at such operating point(s); or

(b) Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(9) **Revalidation.** All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

M. Record keeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of 20.11.61.20 NMAC and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

(2) The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus five years:

(a) a copy of the PAL permit application and any applications for revisions to the PAL; and

(b) each annual certification of compliance pursuant to 20.11.42 NMAC, Operating Permits, and the data relied on in certifying the compliance.

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with 20.11.42 NMAC, Operating Permits. The reports shall meet the following requirements.

(1) **Semi-annual report.** The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information.

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of 20.11.61.20 NMAC.

(c) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(d) A list of any emissions units modified or added to the major stationary source during the preceding six-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and

any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of 20.11.61.20 NMAC.

(g) A signed statement by the responsible official as defined by 20.11.42.7 NMAC certifying the truth, accuracy, and completeness of the information provided in the report.

(2) **Deviation report.** The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) the PAL requirement that experienced the deviation or that was exceeded;

(c) emissions resulting from the deviation or the exceedance; and

(d) a signed statement by the responsible official as defined by 20.11.42.7 NMAC certifying the truth, accuracy, and completeness of the information provided in the report.

(3) **Revalidation results.** The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

O. Transition requirements.

(1) The department may not issue a PAL that does not comply with the requirements of Subsections A through O of 20.11.61.20 NMAC after the administrator has approved regulations incorporating these requirements into the SIP.

(2) The department may supersede any PAL which was established prior to the date of approval of the SIP by the administrator with a PAL that complies with the requirements of 20.11.61.20 NMAC. [20.11.61.20 NMAC - N, 1/23/06]

20.11.61.21 PUBLIC PARTICIPATION AND NOTIFICATION:

A. The department shall, within 30 days after receipt of an application, review such application and determine whether it is administratively complete or there is any deficiency in the application or information submitted. To be deemed administratively complete, the application must meet the requirements of 20.11.61.13 NMAC in addition to the requirements of 20.11.41 NMAC. If the application is deemed:

(1) administratively complete, a letter to that effect shall be sent by certified mail to the applicant;

(2) administratively incomplete, a letter shall be sent by certified mail to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete; upon receipt of the additional information or clarification, the department shall promptly review such information and determine whether the application is administratively complete;

(3) administratively complete but no permit is required, a letter shall be sent by certified mail to the applicant informing the applicant of the determination.

B. For purposes of determining minor source baseline date pursuant to 40 CFR 51:

(1) an application is complete when it contains all the information necessary for processing the application; designating an application complete for purposes of 40 CFR 51 does not preclude the department from requesting or accepting any additional information; and

(2) in the event that additional information is submitted to remedy any deficiency in the application or information submitted, the date of receipt of the application shall be the date on which the department received all required information.

C. The department shall.

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available at the department district and local office nearest to the proposed source a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed:

(a) of the application;

(b) the preliminary determination;

(c) the degree of increment consumption that is expected from the source or modification; and

(d) of the opportunity for comment at a public hearing as well as written

public comment; the public comment period shall be for 30 days from the date of such advertisement.

(4) Send a copy of the notice of public comment to:

- (a) the applicant;
- (b) the administrator; and

(c) officials and agencies having jurisdiction over the location where the proposed construction would occur as follows to include any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source and other appropriate considerations.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection in the same locations where the department made available preconstruction information relating to the source.

(7) Within 180 days after an application is deemed administratively complete, unless the director grants an extension not to exceed 90 days for good cause:

(a) make a final determination of whether construction should be approved, approved with conditions, or disapproved; and

(b) notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the department made available preconstruction information and public comments relating to the source. [20.11.61.21 NMAC - N, 1/23/06]

20.11.61.22 STACK HEIGHT

CREDIT: The department shall review all applications in accordance with the provisions of 20.11.43 NMAC, Stack Heights Requirements.

[20.11.61.22 NMAC - Rp, 20.11.61.19 NMAC, 1/23/06]

20.11.61.23 EXCLUSIONS FROM INCREMENT

CONSUMPTION: Following a public hearing, the director may exclude the following concentrations in determining compliance with a maximum allowable increase:

A. Concentrations due to the increase in emissions from stationary sources, over the emissions from such sources before the effective date of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation). Sources must have converted from the use of petroleum products, natural gas, or both by reason of such order. This exclusion shall not apply more than five years after the effective date of such an order; or

B. Concentrations due to the increase in emissions from sources, over the emissions from such sources before the effective date of a plan in effect pursuant to the federal Power Act. Sources must have converted from using natural gas by reason of a natural gas curtailment plan. This exclusion shall not apply more than five years after the effective date of such a plan; or

C. Concentrations of particulate matter due to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; or

D. The increase in concentrations due to new sources outside the United States over the concentrations attributed to existing sources which are included in the baseline concentrations.

[20.11.61.23 NMAC - Rp, 20.11.61.21 NMAC, 1/23/06]

20.11.61.24 ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING FEDERAL CLASS I AREAS:

A. The department shall transmit to the administrator and the federal land manager a copy of each permit application relating to a major stationary source or major modification proposing to locate within 100 kilometers of any federal class I area. The complete permit application shall be transmitted within 30 days of receipt and 60 days prior to any public hearing on the application. The department shall include all relevant information in the permit application. Relevant information shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The department shall consult with all affected federal land managers as to the completeness of the permit application and shall consider any analysis performed by the federal land manager concerning the impact of the proposed major stationary source or major modification on air quality related values (AQRV). This consideration shall include visibility, if such analysis is received within 30 days after the federal land manager receives a copy of the complete application. Additionally, the department shall notify any affected federal land

manager within 30 days from the date the department receives a request for a pre-application meeting from a proposed source subject to 20.11.61 NMAC. Notice shall be provided to the administrator and federal land manager of every action related to the consideration of such permit. The department shall also provide the federal land manager and the administrator with a copy of the preliminary determination required under 20.11.61.21 NMAC and shall make available to them any materials used in making that determination. In any case where the department disagrees with the federal land manager's analysis of source impact on air quality related values, the department shall, either explain its decision or give notice to the federal land manager as to where the explanation can be obtained. In the case where the department disagrees with the federal land managers' analysis, the department will also explain its decision or give notice to the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed, as to where the decision can be obtained.

B. The department shall transmit to air quality control agencies of neighboring states and Indian governing bodies a copy of each permit application having the potential to affect federal class I areas or increment consumption in areas under their jurisdiction. The department shall also provide the affected air quality control agencies and Indian governing bodies with a copy of the preliminary determination required under 20.11.61.21 NMAC and shall make available to them any materials used in making that determination. The department shall include a provision for a 60 day comment period for the federal land managers before any public hearing on a permit application is held.

C. Federal land managers may demonstrate to the department that emissions from a proposed source or modification would have an adverse impact on air quality related values, including visibility, of any federal class I lands under their jurisdiction. This may be done even though the change in air quality resulting from emissions from the proposed source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a federal class I area. If the department concurs with this demonstration, then the source shall not be issued a permit.

D. Class I waivers: The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from a proposed source or modification would have no adverse impact on air quality related values, including visibility, of federal

class I area under his or her jurisdiction. This may be done even though the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a federal class I area. If the federal land manager concurs with such demonstration and so certifies to the department, the department may grant a waiver from such maximum allowable increases. Emission limitations must be included in the permit as necessary to assure that emissions of sulfur dioxide, particulate matter, and oxides of nitrogen would not exceed the maximum allowable increases over minor source baseline concentrations shown in Table 5 of 20.11.61.30 NMAC.

E. For the case where the federal land manager does not perform an impact analysis with respect to visibility impairment in a federal class I area, the department may perform such an analysis. The department shall not issue the source a permit if the department determines that an adverse impact on visibility would occur. The adverse impact must be due, primarily, to the operation of the proposed source or modification.

F. Sulfur dioxide waiver by governor: The owner or operator of a proposed major stationary source or major modification, which cannot be approved under Subsection D of 20.11.61.23 NMAC, may demonstrate to the governor that the source cannot be constructed by reason of an exceedance of a maximum allowable increase for a federal class I area for sulfur dioxide for a period of 24 hours or less. The owner or operator may also demonstrate that a waiver from this requirement would not adversely affect the air quality related values of the federal class I area. The governor, after consideration of the federal land manager's recommendation and subject to his concurrence, may, after notice and public hearing, grant a waiver from such maximum allowable increase. If the waiver is granted, the department shall issue a permit to the owner or operator of the source or modification. Any owner or operator of a source or modification who obtains a permit under 20.11.61 NMAC shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases of ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of 20.11.61.31 NMAC for periods of 24 hours or less for more than 18 days, not necessarily consecutive, in any annual period.

G. Sulfur dioxide waiver by governor with the president's concurrence. In any case where the governor recommends a waiver in which the federal land manager does not concur, the recommendations of the governor and the federal land

manager shall be transmitted to the president through the office of the governor. If the president so directs, the department shall issue the permit. Any source or modification that obtains a permit under 20.11.61 NMAC shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases in ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of 20.11.61.31 NMAC for periods of 24 hours or less for more than 18 days, not necessarily consecutive, in any annual period. [20.11.61.24 NMAC - Rp, 20.11.61.22 NMAC, 1/23/06]

20.11.61.25 RESTRICTIONS ON AREA CLASSIFICATIONS:

A. Mandatory federal class I areas:

(1) **The following areas were in existence on August 7, 1977, and classified as mandatory federal class I areas and may not be redesignated:**

- (a) international parks (all of them);
- (b) national wilderness areas which exceed 5,000 acres in size;
- (c) national memorial parks which exceed 5,000 acres in size; and
- (d) national parks which exceed 6,000 acres in size.

(2) **Specifically for New Mexico, these areas are:**

- (a) Bandelier wilderness, administered by national park service (NPS);
- (b) Bosque del Apache wilderness, administered by national fish and wildlife service (NFWS);
- (c) Carlsbad caverns national park, administered by NPS;
- (d) Gila wilderness, administered by national forest service (NFS);
- (e) Pecos wilderness, administered by NFS;
- (f) Salt Creek wilderness, administered by NFWS;
- (g) San Pedro Parks wilderness, administered by NFS;
- (h) Wheeler Peak wilderness, administered by NFS; and
- (i) White Mountain wilderness, administered by NFS.

B. Areas which may be redesignated only as class I or class II:

(1) **The following areas may be redesignated only as class I or II:**

- (a) an area, as of August 7, 1977, which exceeds 10,000 acres in size and is a national monument, national primitive area, national preserve, national recreational area, national wild and scenic river, national wildlife refuge; or
- (b) a national park or national wilderness area established after August 7, 1977 which exceeds 10,000 acres in size.

(2) **Specifically for New Mexico,**

these areas include (but are not necessarily limited to):

- (a) Apache Kid wilderness, administered by national forest service (NFS);
 - (b) Bandelier national monument, administered by national park service (NPS);
 - (c) Bitter Lake national wildlife refuge, administered by national fish and wildlife service (NFWS);
 - (d) Blue Range wilderness, administered by NFS;
 - (e) Bosque del Apache national wildlife refuge, administered by NFWS;
 - (f) Capitan mountains wilderness, administered by NFS;
 - (g) Cebolla wilderness, administered by bureau of land management (BLM);
 - (h) Chama River Canyon wilderness, administered by NFS;
 - (i) Cruces Basin wilderness, administered by NFS;
 - (j) De-na-zin wilderness, administered by BLM;
 - (k) El Malpais national monument, administered by NPS;
 - (l) Latir Peak wilderness, administered by NFS;
 - (m) Manzano mountain wilderness, administered by NFS;
 - (n) San Andres national wildlife refuge, administered by NFWS;
 - (o) Sandia Mountain wilderness, administered by NFS;
 - (p) Sevilleta national wildlife refuge, administered by NFWS;
 - (q) West Malpais wilderness, administered by BLM;
 - (r) White Sands national monument, administered by NPS; and
 - (s) Withington Wilderness, administered by NFS.
- [20.11.61.25 NMAC - Rp, 20.11.61.20 NMAC, 1/23/06]

20.11.61.26 TABLE 1 - PSD SOURCE CATEGORIES:

- A.** Carbon black plants (furnace process).
- B.** Charcoal production plants.
- C.** Chemical process plants.
- D.** Coal cleaning plants (with thermal dryers).
- E.** Coke oven batteries.
- F.** Fossil fuel boilers (or combinations thereof) totaling more than 250 million BTU/hr heat input.
- G.** Fossil fuel-fired steam electric plants of more than 250 million BTU/hr heat input.
- H.** Fuel conversion plants.
- I.** Glass fiber processing plants.

- J.** Hydrofluoric acid plants.
- K.** Iron and steel mills.
- L.** Kraft pulp mills.
- M.** Lime plants.
- N.** Municipal incinerators capable of charging more than 50 tons of refuse per day.
- O.** Nitric acid plants.
- P.** Petroleum refineries.
- Q.** Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- R.** Phosphate rock processing plants.
- S.** Portland cement plants.
- T.** Primary aluminum ore reduction plants.
- U.** Primary copper smelters.
- V.** Primary lead smelters.
- W.** Primary zinc smelters.
- X.** Secondary metal production plants.
- Y.** Sintering plants.
- Z.** Sulfur recovery plants.
- AA.** Sulfuric acid plants.
- BB.** Taconite ore processing plants.

[20.11.61.26 NMAC - Rp, 20.11.61.23 NMAC, 1/23/06]

20.11.61.27 TABLE 2 - SIGNIFICANT EMISSION RATES:

POLLUTANT	EMISSION RATE (TONS/YR)
Carbon monoxide	100
Fluorides	3
Lead	0.6
Municipal waste combustor	
Acid gases (measured as sulfur dioxide and hydrogen chloride)	40 (36 megagrams/year)
Metals (measured as particulate matter)	15 (14 megagrams/year)
Organics (measured as total tetra - through octa -chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 (0.0000032 megagrams/yr)
Nitrogen oxides	40
Ozone (as VOC, Volatile Organic Compounds)	40 (VOC)
Particulate Matter	
Particulate matter emissions	25
PM ₁₀ emissions	15
Sulfur compounds	
Hydrogen sulfide (H ₂ S)	10
Reduced sulfur compounds (incl. H ₂ S)	10
Sulfur dioxide	40
Sulfuric acid mist	7
Total reduced sulfur (incl. H ₂ S)	10
Any other pollutant regulated under the Act that is not listed in this table	Any emission rate
Each regulated pollutant	Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24 -hr average) in any Class I Federal area located within 10 km of the source.

[20.11.61.27 NMAC - Rp, 20.11.61.24 NMAC, 1/23/06]

20.11.61.28 TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS:

POLLUTANT	AIR QUALITY CONCENTRATION micrograms per cubic meter (ug/m ³)	AVERAGING TIME
Carbon monoxide	575	8 hours
Fluorides	0.25	24 hours
Lead	0.1	3 months
Nitrogen dioxide	14	Annual
Ozone	B	
Particulate matter (PM ₁₀)	10	24 hours
Sulfur compounds		
Hydrogen sulfide (H ₂ S)	0.20	1 hour
Reduced sulfur compounds (incl. H ₂ S)	10	1 hour
Sulfur dioxide	13	24 hours
Sulfuric acid mist	A	
Total reduced sulfur (incl. H ₂ S)	10	1 hour
a - No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.		

[20.11.61.28 NMAC - Rp, 20.11.61.25 NMAC, 1/23/06]

20.11.61.29 TABLE 4 - ALLOWABLE PSD INCREMENTS:

	Micrograms per cubic meter (i g/m ³)		
	Class I	Class II	Class III
Nitrogen Dioxide annual arithmetic mean	2.5	25	50
Particulate Matter PM ₁₀ , annual arithmetic mean	4	17	34
PM ₁₀ , 24-hour maximum	8 ^a	30 ^a	60 ^a
Sulfur Dioxide annual arithmetic mean	2	20	40
24-hour maximum	5 ^a	91 ^a	182 ^a
3-hour maximum	25 ^a	512 ^a	700 ^a
a - Not to be exceeded more than once a year. b - No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.			

[20.11.61.29 NMAC - Rp, 20.11.61.26 NMAC, 1/23/06]

20.11.61.30 TABLE 5 - MAXIMUM ALLOWABLE INCREASES FOR CLASS I WAIVERS:

	Micrograms per cubic meter (i g/m ³)
Nitrogen Dioxide annual arithmetic mean	25
Particulate Matter PM ₁₀ , annual arithmetic mean	17
PM ₁₀ , 24-hour maximum	30
Sulfur Dioxide annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

[20.11.61.30 NMAC - N, 1/23/06]

20.11.61.31 TABLE 6 - MAXIMUM ALLOWABLE INCREASE FOR SULFUR DIOXIDE WAIVER BY GOVERNOR:

Period of Exposure	Micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) Terrain Areas	
	Low	High
24-hr. maximum	36	62
3-hr. maximum	130	221

[20.11.61.31 NMAC - N, 1/23/06]

HISTORY OF 20.11.61 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.

Regulation No. 29, Prevention Of Significant Deterioration, 1/3/85;

Regulation No. 29, Prevention Of Significant Deterioration, 6/18/86;

Regulation No. 29, Prevention Of Significant Deterioration, 3/16/89;

Regulation No. 29, Prevention Of Significant Deterioration, 4/24/90;

Regulation No. 29, Prevention Of Significant Deterioration, 2/26/93.

History of Repealed Material:

20 NMAC 11.61, Prevention of Significant Deterioration (filed 10/27/95) repealed 12/1/95.

20.11.61 NMAC, Prevention of Significant Deterioration (filed 8/30/02) repealed 1/23/06.

Other History:

Regulation No. 29, Prevention Of Significant Deterioration, filed 2/26/93 renumbered, reformatted and replaced by 20 NMAC 11.61, Prevention of Significant Deterioration, filed 10/27/95.

20 NMAC 11.61, Prevention of Significant Deterioration, filed 10/27/95 replaced by 20 NMAC 11.61, Prevention of Significant Deterioration, filed 3/18/99.

20 NMAC 11.61, Prevention of Significant Deterioration, filed 3/18/99 renumbered, reformatted, amended, and replaced by 20.11.61 NMAC, Prevention of Significant Deterioration, effective 10/1/02.

20.11.61 NMAC, Prevention of Significant Deterioration (filed 8/30/02) was replaced by 20.11.61 NMAC, Prevention of Significant Deterioration, effective 1/23/06.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.74 NMAC, Sections 7, 10, 11, 12, 13, 14, 200, 300, 320, 501, 502 and 503 effective on 1/22/06.

20.2.74.7 DEFINITIONS:

Terms used but not defined in this part shall have the meaning given them by 20.2.2 NMAC (Definitions) (formerly AQCR 100). As used in this part the following definitions shall apply.

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

B. "Actual emissions" means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with the criteria as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two year period which precedes the particular date and which is representative of normal source operation. The Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emis-

sions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period;

(2) The Secretary may determine that the source specific allowable emissions for the unit are equivalent to the actual emissions of the unit;

(3) For any emissions unit which has not begun normal operation on the particular date, actual emissions shall equal the potential to emit of the unit on that date.]

B. "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with Paragraphs (2) through (4) of this subsection.

(1) This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 20.2.74.320 NMAC. Instead, Subsections G and AQ of this section shall apply for those purposes.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time peri-

od upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(3) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

C. "Administrator" means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

D. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the class I federal area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with the following: 1) times of visitor use of the class I federal area; and 2) the frequency and timing of natural conditions that reduce

visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

E. "Allowable emissions"

means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) the applicable standards as set forth in 40 CFR Parts 60 and 61;

(2) the applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

F. "Attainment area"

means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling not to exceed any national ambient air quality standard for such pollutant, and is so designated under Section 107 (d) (1) (D) or (E) of the act.

G. "Baseline actual emissions"

means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with start-ups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period

for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of this paragraph.

(2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this part or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with start-ups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of this paragraph.

(3) For a new emissions unit, the

baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of this subsection, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of this subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this subsection.

[G]H. "Baseline area"

means all lands designated as attainment or unclassifiable in which the major source or major modification would construct or would have an air quality impact equal to or greater than one microgram per cubic meter (annual average) of the pollutant for which the minor source baseline date is established. The major source or major modification establishes the minor source baseline date (see the definition "minor source baseline date" in this part). Lands are designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the act within each federal air quality control region in the state of New Mexico. Any baseline area established originally for TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. A TSP baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date (see "minor source baseline date" in this part).

[H. "Baseline concentration"

means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date except as provided in paragraph (3) of subsection H of 20.2.74.7 NMAC (below);

(2) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date;

(3) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after the major source

baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

L. “Baseline concentration” means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(1) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) the actual emissions, as defined in this section, representative of sources in existence on the applicable minor source baseline date, except as provided in Paragraph (2) of this subsection;

(b) the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) actual emissions, as defined in this section, from any major stationary source on which construction commenced after the major source baseline date; and

(b) actual emissions increases and decreases, as defined in Subsection B of this section, at any stationary source occurring after the minor source baseline date.

[F]J. “Begin actual construction” means, in general, initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

[J]K. “Best Available Control Technology (BACT)” means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated pollutant which would be emitted from any proposed major stationary source or major modification, which the secretary determines is achievable on a case-by-case basis. This determination will take into account energy, environmental, and economic impacts and other costs. The determination must be achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such

pollutants. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

[K]L. “Building, structure, facility, or installation” means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same “major group” (i.e., which have the same first two digit code) as described in the standard industrial classification (SIC) manual, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively) or any superseding SIC manual.

[H]M. “Class I federal area” means any federal land that is classified or reclassified as “class I” as described in 20.2.74.108 NMAC.

[M]N. “Construction” means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

N. “Commence” means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary pre-construction approvals or permits and has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake and complete, within a reasonable time, a program of actual construction.

O. “Construction” means any physical change or change in the method of operation (including fabrication,

erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

P. “Continuous emissions monitoring system (CEMS)” means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

Q. “Continuous emissions rate monitoring system (CERMS)” means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

R. “Continuous parameter monitoring system (CPMS)” means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and to record average operational parameter value(s) on a continuous basis.

[O]S. “Department” means the New Mexico environment department.

T. “Electric utility steam generating unit” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

[P]R. “Emissions unit” means any part of a stationary source which emits, or would have the potential to emit, any regulated pollutant.

U. “Emissions unit” means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric utility steam generating unit as defined in this section. For purposes of this section, there are two types of emissions units as described in the following.

(1) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

[Q]V. "Federal land manager" means, with respect to any lands in the United States, a federal level cabinet secretary of a federal level department (e.g. interior dept.) with authority over such lands.

[R]W. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including:

(1) those requirements developed pursuant to 40 CFR Parts 60 and 61;

(2) requirements within any applicable state implementation plan;

(3) any permit requirements established pursuant to 40 CFR 52.21; or

(4) under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

[S]X. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

[T]Y. "High terrain" means any area having an elevation nine hundred (900) feet or more above the base of a source's stack.

[U]Z. "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

[V]AA. "Innovative Control Technology" means any system of air pollution control that has not been adequately demonstrated in practice. But such system would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

[W]AB. "Low terrain" means any area other than high terrain.

AC. "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source

to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

[X. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any regulated pollutant. Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. A physical change or change in the method of operation shall not include:

(1) Routine maintenance, repair, and replacement;

(2) Use of an alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) Use of an alternative fuel or raw material by a stationary source which:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(6) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(7) Any change in ownership at a stationary source.]

AD. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in of this section) of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds

shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source;

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which the project is located; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit; this exemption shall apply on a pollutant-by-pollutant basis;

(i) the reactivation of a very clean coal-fired electric utility steam generating unit.

(2) This definition shall not apply with respect to a particular regulated new

source review pollutant when the major stationary source is complying with the requirements under 20.2.74.320 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.74.320 NMAC shall apply.

~~[X]~~**AE.** "Major source base-line date" means:

(1) in the case of particulate matter and sulfur dioxide, January 6, 1975; and

(2) in the case of nitrogen dioxide, February 8, 1988.

~~[Z]~~**AE.** "Major stationary source" means the following:~~[Z]~~

(1) Any stationary source listed in table 1 ~~[of this Part]~~ (20.2.74.501 NMAC) which emits, or has the potential to emit, emissions equal to or greater than one hundred (100) tons per year of any regulated new source review pollutant~~[or]~~

(2) Any stationary source not listed in table 1 ~~[of this Part]~~ (20.2.74.501 NMAC) and which emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant~~[or]~~

(3) Any physical change that would occur at a stationary source not otherwise qualifying under Paragraphs (1) or (2) of this subsection ~~[Z of 20.2.74.7 NMAC]~~ if the change would constitute a major stationary source by itself.~~[Z]~~

(4) A major source that is major for volatile organic compounds shall be considered major for ozone.~~[Z]~~

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 ~~[of this Part]~~ (20.2.74.501 NMAC) or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

~~[AA]~~**AG.** "Mandatory class I federal area" means any area identified in the Code of Federal Regulations (CFR), 40 CFR Part 81, Subpart D. See 20.2.74.108 NMAC for a list of these areas in New Mexico.

~~[AB]~~**AH.** "Minor source base-line date" means the earliest date after the trigger date on which the owner or operator of a major stationary source or major modification subject to 40 CFR 52.21 or to this part submits a complete application under the relevant regulations.

(1) The trigger date is:

(a) in the case of particulate matter and sulfur dioxide, August 7, 1977; and

(b) in the case of nitrogen dioxide, February 8, 1988.

(2) Any minor source baseline date established originally for the TSP (total suspended particulates) increments shall

remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. The department may rescind any TSP minor source baseline date where it can be shown, to the department's satisfaction, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date, did not result in a significant amount of PM-10 emissions.

~~[AG]~~**AI.** "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

~~[AD]~~**AJ.** "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

~~[AE]~~ "Net ~~emissions~~ increase" means:

(1) The amount by which the sum of the following exceeds zero:

(a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

(b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs;

(3) An increase or decrease in actual emissions is creditable only if either the Department or the Administrator has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs;

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM₁₀ emissions can be used to evaluate the net emissions increase for PM₁₀;

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(6) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(c) It has approximately the same effect on ambient air quality or health and welfare as that attributed to the increase from the particular change;

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty (180) days.]

AK. "Net emissions increase" means, with respect to any regulated new source review pollutant emitted by a major stationary source, the following.

(1) The amount by which the sum of the following exceeds zero.

(a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection D of 20.2.74.200 NMAC.

(b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as provided in Subsection G, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection G of this section shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

(b) the department has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs

before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) Paragraph (2) of Subsection B of this section shall not apply for determining creditable increases and decreases.

[AF]AL. "Nonattainment area" means an area which has been designated under Section 107 of the Federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by EPA.

[AG]AM. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly.

[AH]AN. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollutant control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

AQ. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and

record the mass emissions rate (for example, lb/hr) on a continuous basis.

AP. "Project" means a physical change in, or change in method of operation of, an existing major stationary source.

AQ. "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated new source review pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(2) shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection G of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions unit's potential to emit, in tons per year, as defined in Subsection AQ of this section.

AR. "Regulated new source review pollutant", for purposes of this part, means the following:

(1) any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds are precursors for ozone);

(2) any pollutant that is subject to any standard promulgated under Section 111 of the act;

(3) any class I or II substance sub-

ject to a standard promulgated under or established by title VI of the act; or

(4) any pollutant that otherwise is subject to regulation under the act; except that any or all hazardous air pollutants either listed in Section 112 of the act or added to the list pursuant to Section 112(b)(2) of the act, which have not been delisted pursuant to Section 112(b)(3) of the act, are not regulated new source review pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the act.

[AI. "Regulated Pollutant" means any air pollutant, the emission or ambient concentration of which is regulated pursuant to the Act.]

AS. "Replacement unit" means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

[AJ]AT. "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

[AK]AU. "Secretary" means the cabinet level secretary of the New Mexico

environment department or his or her successor.

~~[AE]~~**AV. “Significant”** means in reference to a net emissions increase or the potential of a source to emit air pollutants, a rate of emission that would equal or exceed any of the rates listed in table 2 ~~[of this Part]~~ (20.2.74.502 NMAC).

AW. “Significant emissions increase” means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AV of this section) for that pollutant.

~~[AM]~~**AX. “Stationary source”** means any building, structure, facility, or installation which emits, or may emit, any regulated new source review pollutant.

~~[AN]~~**AY. “Temporary source”** means a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations.

~~[AO]~~**AZ. “Visibility impairment”** means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

~~[AP]~~**BA. “Volatile organic compound (VOC)”** means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity.

20.2.74.10 SEVERABILITY. If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

20.2.74.11 CONSTRUCTION. This part shall be liberally construed to carry out its purpose.

20.2.74.12 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

20.2.74.13 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

20.2.74.14 LIMITATION OF DEFENSE. The existence of a valid permit under this part shall not constitute a defense to a violation of any section of this part,

except the requirement for obtaining a permit.

20.2.74.200 APPLICABILITY. ~~[Any person constructing any new major stationary source or major modification, as defined in this Part, that emits, or will emit, regulated pollutants in an attainment or unclassified area shall obtain a permit. The permit shall be obtained from the Department in accordance with the requirements of this Part prior to the construction or modification.]~~

A. The requirements of this part apply to the construction of any new major stationary source (as defined in 20.2.74.7 NMAC) or any project at an existing major stationary source in an area designated as attainment or unclassifiable.

B. The requirements of Sections 300 through 306, 400 and 403 of this part apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this part otherwise provides.

C. No new major stationary source or major modification to which the requirements of Subsections A, B, C and D of 20.2.74.300 NMAC, and Sections 301, 302, 303, 304, 305, 306, 400 and 403 of this part apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

D. Applicability procedures.

(1) Except as otherwise provided in Subsections E and F of this section, and consistent with the definition of major modification contained in 20.2.74.7 NMAC, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in 20.2.74.7 NMAC), and a significant net emissions increase (as defined in Subsections AK and AV of 20.2.74.7 NMAC). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) through (4) of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in

20.2.74.7 NMAC. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in 20.2.74.7 NMAC) and the baseline actual emissions (as defined in Paragraphs (1) and (2) of Subsection G of 20.2.74.7 NMAC) for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in 20.2.74.7 NMAC).

(4) Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in 20.2.74.7 NMAC) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Paragraph (3) of Subsection G of 20.2.74.7 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in 20.2.74.7 NMAC).

(5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in Paragraph (3) of this subsection for the existing unit and determined using the method specified in Paragraph (4) of this subsection for the new unit.

E. For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.2.74.320 NMAC.

20.2.74.300 OBLIGATIONS OF OWNERS OR OPERATORS OF SOURCES:

A. Any owner or operator who begins actual construction or operates a source or modification without, or not in accordance with, a permit issued under the requirements of this part shall be subject to enforcement action.

B. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, sections 74-2-1 to 74-2-17, NMSA 1978; any applicable regulations of the board; and any other requirements under local, state, or federal law.

C. Approval to construct shall become invalid if: 1) construction is not commenced within eighteen (18) months after receipt of such approval; 2) if construction is discontinued for a period of eighteen (18) months or more; or 3) if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within eighteen (18) months of the projected and approved commencement date. The secretary may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified.

D. If a source or modification becomes a major stationary source or major modification solely due to a relaxation in any enforceable limitation (which limitation was established after August 7, 1980), on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this part shall apply to the source or modification as though construction had not yet commenced.

E. The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection AQ of 20.2.74.7 NMAC for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) a description of the project;

(b) identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection AQ of 20.2.74.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of this subsection to the department.

Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the department; however, necessary preconstruction approvals and/or permits must be obtained before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Subparagraph (b) of Paragraph (1) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Subparagraph (c) of Paragraph (1) of this subsection setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection) by a significant amount (as defined in 20.2.74.7 NMAC) for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(a) the name, address and telephone number of the major stationary source;

(b) the annual emissions as calculated pursuant to Paragraph (3) of this subsection; and

(c) any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

F. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection E of this section

available for review upon request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

20.2.74.320 A C T U A L S PLANTWIDE APPLICABILITY LIMITS (PALs)

A. Applicability.

(1) The department may approve the use of an actuals PAL for any existing major stationary source if the PAL meets the requirements in this section. The term "PAL" shall mean "actuals PAL" throughout this section.

(2) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

(a) is not a major modification for the PAL pollutant;

(b) does not have to be approved through the requirements of this part; and

(c) is not subject to the provisions in Subsection D of 20.2.74.300 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major new source review program).

(3) Except as provided under Subparagraph (c) of Paragraph (1) of this subsection, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions applicable to this section.

(1) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions (as defined in 20.2.74.7 NMAC) of all emissions units (as defined in 20.2.74.7 NMAC) at the source, that emit or have the potential to emit the PAL pollutant.

(2) Allowable emissions means "allowable emissions" as defined in 20.2.74.7 NMAC, except as this definition is modified in accordance with the following.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in 20.2.74.7 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(3) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an

amount less than the significant level for that PAL pollutant, as defined in Subsection AV of 20.2.74.7 NMAC or in the act, whichever is lower.

(4) Major emissions unit means:

(a) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the act for nonattainment areas. For example, in accordance with the definition of major stationary source in Section 182(c) of the act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(5) Plantwide applicability limitation (PAL) means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this section.

(6) PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) PAL effective period means the period beginning with the PAL effective date and ending 10 years later.

(8) PAL major modification means, notwithstanding the definitions for major modification and net emissions increase in 20.2.74.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) PAL permit means the major new source review permit, the minor new source review permit, or the state operating permit under a program that is approved into the plan, or the title V permit issued by the department that establishes a PAL for a major stationary source.

(10) PAL pollutant means the pollutant for which a PAL is established at a major stationary source.

(11) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection AV of 20.2.74.7 NMAC or in the act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of this subsection.

C. Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval.

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subsection M of this section.

D. General requirements for establishing PALs.

(1) The department may establish a PAL at a major stationary source, provided that at a minimum, the following requirements are met.

(a) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of this section.

(c) The PAL permit shall contain all the requirements of Subsection G of this section.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of this section for each emissions unit under the PAL through the PAL effective period.

(2) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

E. Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department must address all material comments before taking final action on the permit.

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in 20.2.74.7 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection AV of 20.2.74.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOx to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level

reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of this subsection, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

G. Contents of the PAL permit. The PAL permit shall contain, at a minimum, the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of Subsection I of this section.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection C of this section.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Subsection M of this section.

(8) A requirement to retain the records required under Subsection M of this section on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of this section by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

H. PAL effective period and reopening of the PAL permit.

(1) PAL effective period. The PAL effective period shall be 10 years.

(2) Reopening of the PAL permit.

(a) During the PAL effective period, the department shall reopen the PAL

permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(iii) revise the PAL to reflect an increase in the PAL as provided under Subsection K of this section.

(b) The department may reopen the PAL permit for the following:

(i) to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source under the plan; and

(iii) to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an AQRV that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Item (i) of Subparagraph (a) of Paragraph (2) of this subsection for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of Subsection E of this section.

I. Expiration of a PAL.

Any PAL that is not renewed in accordance with the procedures in Subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply.

(1) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as

required under Paragraph (5) of Subsection J of this section, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (b) of Paragraph (1) of Subsection I of this section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source will be subject to major new source review requirements if such change meets the definition of major modification in 20.2.74.7 NMAC.

(5) The major stationary source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Subsection D of 20.2.74.300 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (2) of Subsection A of this section.

J. Renewal of a PAL.

(1) The department shall follow the procedures specified in Subsection E of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(2) Application deadline. A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or oper-

ator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(3) Application requirements. The application to renew a PAL permit shall contain the following information.

(a) The information required in Subsection C of this section.

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(d) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(4) PAL adjustment. In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraphs (a) and (b) of this paragraph. However, in no case may any such adjustment fail to comply with Subparagraph (c) of this paragraph.

(a) If the emissions level calculated in accordance with Subsection F of this section is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of this paragraph.

(b) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(c) Notwithstanding Subparagraphs (a) and (b) of this paragraph:

(i) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Subsection K of this section (increasing a PAL).

(5) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

K. Increasing a PAL during the PAL effective period.

(1) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

(a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator obtains a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of this paragraph, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major new source review process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of this section.

L. Monitoring requirements for PALs.

(1) General requirements.

(a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Paragraph (2) of this subsection and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of this paragraph, you may also employ an alternative monitoring approach that meets Subparagraph (a) of this paragraph if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(2) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of this subsection:

(a) Mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

(3) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or

operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(4) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

(b) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(5) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(6) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not required.

(7) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of this subsection, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time

of permit issuance:

(a) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(9) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every 5 years after issuance of the PAL.

M. Recordkeeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(2) The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus 5 years:

(a) a copy of the PAL permit application and any applications for revisions to the PAL; and

(b) each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the applicable title V operating permit program. The reports shall meet the following requirements.

(1) Semi-annual report. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) total annual emissions (tons per year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of this section;

(c) all data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

(d) a list of any emissions units modified or added to the major stationary source during the preceding 6-month period;

(e) the number, duration, and

cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken;

(f) a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of this section; and

(g) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(2) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) the PAL requirement that experienced the deviation or that was exceeded;

(c) emissions resulting from the deviation or the exceedance; and

(d) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(3) Revalidation results. The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

O. Transition requirements.

(1) The department may not issue a PAL that does not comply with the requirements in this section after the administrator has approved regulations incorporating these requirements into a plan.

(2) The department may supersede any PAL which was established prior to the date of approval of the plan by the administrator with a PAL that complies with the requirements of this section.

20.2.74.501 TABLE 1 - PSD SOURCE CATEGORIES.

- A.** Carbon black plants (furnace process)
- B.** Charcoal production plants
- C.** Chemical process plants
- D.** Coal cleaning plants (with thermal dryers)
- E.** Coke oven batteries
- F.** Fossil fuel boilers (or combinations thereof) totaling more than 250 million BTU/hr heat input
- G.** Fossil fuel-fired steam electric plants of more than 250 million BTU/hr heat input
- H.** Fuel conversion plants
- I.** Glass fiber processing plants
- J.** Hydrofluoric acid plants
- K.** Iron and steel mills
- L.** Kraft pulp mills
- M.** Lime plants
- N.** Municipal incinerators capable of charging more than ~~[250]~~ 50 tons of refuse per day
- O.** Nitric acid plants
- P.** Petroleum refineries
- Q.** Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
- R.** Phosphate rock processing plants
- S.** Portland cement plants
- T.** Primary aluminum ore reduction plants
- U.** Primary copper smelters
- V.** Primary lead smelters
- W.** Primary zinc smelters
- X.** Secondary metal production plants
- Y.** Sintering plants
- Z.** Sulfur recovery plants
- AA.** Sulfuric acid plants
- AB.** Taconite ore processing plants

20.2.74.502 TABLE 2 - SIGNIFICANT EMISSION RATES:

POLLUTANT	EMISSION RATE (TONS/YR)
[Asbestos]	[0.007]
[Beryllium]	[0.0004]
Carbon monoxide	100
Fluorides	3
Lead	0.6
[Mercury]	[0.1]
Municipal waste combustor	
Acid gases (measured as sulfur dioxide and hydrogen chloride)	40 (36 megagrams/year)
Metals (measured as particulate matter)	15 (14 megagrams/year)
Organics (measured as total tetra - through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 (0.0000032 megagrams/yr)
Nitrogen oxides	40
Ozone (as VOC, Volatile Organic Compounds)	40 (VOC)
Particulate Matter	
Particulate matter emissions	25
PM-10 emissions	15
Sulfur compounds	
Hydrogen sulfide (H ₂ S)	10
Reduced sulfur compounds (incl. H ₂ S)	10
Sulfur dioxide	40
Sulfuric acid mist	7
Total reduced sulfur (incl. H ₂ S)	10
[Vinyl chloride]	[1]
Any other pollutant regulated under the act that is not listed in this table	Any emission rate

Each regulated pollutant	Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24 -hr average) in any class I federal area located within 10 km of the source.
--------------------------	--

20.2.74.503

TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS[+].

POLLUTANT	AIR QUALITY CONCENTRATION micrograms per cubic meter	AVERAGING TIME
[Asbestos]	[a]	
[Beryllium]	[0.001]	[24 hours]
Carbon monoxide	575	8 hours
Fluorides	0.25	24 hours
Lead	0.1	3 months
[Mercury]	[0.25]	[24 hours]
Nitrogen dioxide	14	Annual
Ozone	b	
Particulate matter (PM -10)	10	24 hours
Sulfur compounds		
Hydrogen sulfide (H ₂ S)	0.20	1 hour
Reduced sulfur compounds (incl. H ₂ S)	10	1 hour
Sulfur dioxide	13	24 hours
Sulfuric acid mist	a	
Total reduced sulfur (in cl. H ₂ S)	10	1 hour
[Vinyl chloride]	[15]	[24 hours]
a - No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.		
b - [No specific air quality concentration for ozone is prescribed. Exemptions are granted when a source's VOC emissions are less than 100 tons/year.] <u>No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.</u>		

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.79 NMAC, Sections 7, 10, 11, 12, 13, 14, 109, 115 and 120 effective on 1/22/06.

20.2.79.7 DEFINITIONS. In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part, the following terms apply.

~~[A. "Actual emissions"~~ means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with the following:

~~(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. A different time period~~

~~shall be allowed upon a determination by the Department that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.~~

~~(2) The Department may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.~~

~~(3) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.]~~

A. "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with the following, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide

applicability limit under 20.2.79.120 NMAC. Instead, Subsections E and AI of this section shall apply for those purposes.

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit that has not begun normal operations on the par-

ticular date, actual emissions shall equal the potential to emit of the unit on that date.

B. “Administrator” means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

[B]C. “Adverse impact on visibility” means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor’s visual experience of the mandatory federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with: 1) times of visitor use of the mandatory federal class I area; and 2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

[C]D. “Allowable emissions” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- (1) the applicable standard set forth in 40 CFR Part 60 or 61;
- (2) any applicable state implementation plan emissions limitation including those with a future compliance date; or
- (3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

E. “Baseline actual emissions” means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable dur-

ing the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of Paragraph (1) of this subsection.

(2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of Subsection D of 20.2.79.115 NMAC.

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to deter-

mine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (2) of this subsection.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit’s potential to emit.

(4) For a plantwide applicability limit for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of this subsection, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of this subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this subsection.

[D]E. “Begin actual construction” means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building support and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

G. “Best available control technology (BACT)” means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61.

If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

[E]H. "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement (U.S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively).

[F]I. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

[G]J. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

K. "Continuous emissions monitoring system" (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

L. "Continuous emissions rate monitoring system" (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

M. "Continuous parameter monitoring system" (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and to record average operational parameter value(s) on a continuous basis.

N. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

[H]O. "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric steam generating unit as defined in Subsection N of this section. For purposes of this section, there are two types of emissions units.

(1) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than 2 years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

[I]P. "Federal class I area" means any Federal land that is classified or reclassified "class I".

[K]Q. "Federal land manager" means, with respect to any lands in the United States, the secretary of the [federal] department with authority over such lands.

[L]R. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

[M]S. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

[N]T. "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source; in no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

[O. "Major modification" means;

(1) Any physical change in, or change in the method of operation, of a major stationary source, that would result in a significant net emissions increase of any regulated pollutant for which the stationary source is already major.

(2) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(3) A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the Federal Act.

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(e) Use of an alternative fuel or raw material by a stationary source which:

(i) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

(ii) The source is approved to use under any permit issued under this Part;

~~(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166.~~

~~(g) Any change in ownership at a stationary source.~~

~~(4) A modification shall not be a major modification due to secondary emissions.~~

~~(5) A modification shall not be a major modification due to fugitive emissions, to the extent they are quantifiable, unless the source belongs to:~~

~~(a) Any category in subsection B of 20.2.79.119 NMAC; or~~

~~(b) Any other stationary source category which as of August 7, 1980 is being regulated under Section 111 or 112 of the Federal Act.]~~

U. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the federal Clean Air Act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pur-

suant to 40 CFR 51.165 or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source; or

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan for the state in which the project is located, and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.2.79.120 NMAC for a plantwide applicability limit for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.79.120 NMAC shall apply.

[P]V. "Major stationary source" means the following.

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated new source review pollutant subject to regulation under the federal Clean Air Act.

(2) Any physical change that would occur at a stationary source not qualifying under Paragraph (1) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

(3) A major stationary source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

(4) A stationary source shall not be a major stationary source due to fugitive emissions, to the extent they are quantifiable, unless the source belongs to:

(a) any category in Subsection B of 20.2.79.119 NMAC; or

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

(5) A stationary source shall not be a major stationary source due to secondary emissions.

[Q]W. "Mandatory federal class I area" means those federal lands that are international parks, national wilderness areas which exceed five thousand (5,000) acres in size, national memorial parks which exceed five thousand (5,000) acres in size, and national parks which exceed six thousand (6,000) acres in size, and which were in existence on August 7, 1977. These areas may not be redesignated.

[R]X. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

[S]Y. "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable state implementation plan.

[T. "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(1) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(a) The date five years before construction on the particular change commences; and

(b) The date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if neither the Department nor the administrator has relied on it in issuing a permit for the source under this Part and, for a decrease, the administrator has not relied on it in issuing a permit under 40 CFR 52.21, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) It is federally enforceable at and after the time that actual construction of the particular change begins;

(c) It has not been relied on in any New Mexico air quality permit and has not been relied on by the state in demonstrating attainment or reasonable further progress;

and

~~(d) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.~~

~~(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.]~~

Z. "Net emissions increase".

(1) With respect to any regulated new source review pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection E of 20.2.79.109 NMAC; and

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection E of this section, except that Subparagraphs (c) and (d) of Paragraph (2) of Subsection E of this section shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs;

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

(b) either the department or the administrator has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(c) the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(d) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(7) Paragraph (1) of Subsection A of this section shall not apply for determining creditable increases and decreases or after a change.

[U]AA. "Nonattainment area" means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under Subparagraphs (A) through (C) of Section 107(d)(1) of the federal Clean Air Act.

AB. "Nonattainment major new source review (NSR) program" means a major source preconstruction permit program that has been approved by the administrator and incorporated into the New Mexico state implementation plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major new source review permit.

[W]AC. "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

[W]AD. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly.

[X]AE. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the

effect it would have on emissions is federally enforceable.

AE. "Predictive emissions monitoring system" (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

AG. "Prevention of significant deterioration (PSD) permit" means any permit that is issued under 20.2.74 NMAC.

AH. "Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

AI. "Projected actual emissions" means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated new source review pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(2) shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection E of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions

unit's potential to emit, in tons per year, as defined under Subsection AE of this section.

AJ. "Regulated new source review pollutant", for purposes of this section, means the following:

(1) nitrogen oxides or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated; or

(3) any pollutant that is a constituent or precursor of a general pollutant listed in Paragraphs (1) or (2) of this subsection, provided that a constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant.

~~**[X]. "Regulated pollutant"**~~ means any air pollutant, the emission or ambient concentration of which is regulated pursuant to the Federal Act.]

AK. "Replacement Unit" means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

[Z]AL. "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a

mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

~~**[AA]AM.**~~

"Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates: carbon monoxide, 100 tons per year; nitrogen oxides, 40 tons per year; sulfur dioxide, 40 tons per year; PM-10 emissions, 15 tons per year; ozone, 40 tons per year of volatile organic compounds; lead, 0.6 tons per year.

AN. "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AM of this section) for that pollutant.

[AB]AO. "Stationary source" means any building, structure, facility, or installation which emits or may emit any regulated new source review pollutant.

[AC]AP. "Temporary source" means a stationary source which changes its location or ceases to exist within one year from the date of initial start of operations.

[AD]AQ. "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

20.2.79.10 SEVERABILITY. If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

20.2.79.11 CONSTRUCTION. This part shall be liberally construed to carry out its purpose.

20.2.79.12 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

20.2.79.13 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

20.2.79.14 LIMITATION OF DEFENSE. The existence of a valid permit under this part shall not constitute a defense to a violation of any section of this part, except the requirement for obtaining a permit.

20.2.79.109 APPLICABILITY.

A. Any person constructing any new major stationary source or major modification shall obtain a permit from the department in accordance with the requirements of this part prior to the start of construction or modification if either of the following conditions apply:

(1) the major stationary source or major modification will be located within a nonattainment area so designated pursuant to Section 107 of the federal Clean Air Act and will emit a regulated pollutant for which it is major and which the area is designated nonattainment for; or

(2) the major stationary source or major modification will be located within an area designated attainment or unclassifiable pursuant to Section 107 of the federal Clean Air Act and will emit a regulated pollutant for which it is major and the ambient impact of such pollutant would exceed any of the significance levels in Subsection A of 20.2.79.119 NMAC at any location that does not meet any national ambient air quality standard for the same pollutant. (See Subsection D of 20.2.79.109 NMAC.)

B. The requirements of this part apply to each regulated pollutant meeting the criteria of either Paragraph (1) or Paragraph (2) of Subsection A of 20.2.79.109 NMAC.

C. For an area which is nonattainment for ozone, volatile organic compounds and oxides of nitrogen are the regulated pollutants which may make this part applicable under the provisions of Paragraph (1) of Subsection A of 20.2.79.109 NMAC.

D. Other requirements.

(1) A new major stationary source or major modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC shall demonstrate that the source or modification will not cause or contribute to a violation of any national ambient air quality standard by meeting the following requirements and no others of this part:

~~(b)(a)~~ Paragraph (2) of Subsection C of 20.2.79.112 NMAC regarding emission offsets;

~~(b)(b)~~ Subsection D of 20.2.79.112 NMAC regarding a net air quality benefit;

~~(b)(c)~~ 20.2.79.114 NMAC - Emission Offset Baseline;

~~(b)(d)~~ 20.2.79.115 NMAC - Emission Offset; and

~~(b)(e)~~ 20.2.79.117 NMAC - Air Quality Benefit.

(2) In addition, a new source or modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC and is also a major stationary source or major modification as

defined in 20.2.74 NMAC (prevention of significant deterioration (PSD)), shall obtain a PSD permit under the provisions of 20.2.74 NMAC.

E. Applicability procedures.

(1) Except as otherwise provided in Paragraphs (3) and (4) of this subsection, and consistent with the definition of major modification, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in Subsection AM of 20.2.79.7 NMAC), and a significant net emissions increase (as defined in Subsections Z and AM of 20.2.79.7 NMAC). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) and (4) of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions (as defined in Paragraphs (1) and (2) of Subsection E of 20.2.79.7 NMAC, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 NMAC).

(4) Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Paragraph (3) of Subsection E of 20.2.79.7 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 NMAC).

(5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in Paragraph (3) of this subsection for the existing unit and determined using the method specified in Paragraph (4) of this subsection for the new unit.

(6) For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.2.79.120 NMAC.

F. The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection AI of 20.2.79.7 NMAC for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

- (a) a description of the project;
- (b) identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection AI of 20.2.79.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of this subsection to the department. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the department; however, necessary preconstruction approvals and/or permits must be obtained before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated new

source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified in Subparagraph (b) of Paragraph (1) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Paragraph (3) of this subsection setting out the unit's annual emissions during the year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection, by a significant amount (as defined in Subsection AM of 20.2.79.7 NMAC) for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(a) the name, address and telephone number of the major stationary source;

(b) the annual emissions as calculated pursuant to Paragraph (3) of this subsection; and

(c) any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

G. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection F of this section available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

20.2.79.115 EMISSION OFFSETS. All emission offsets approved by the department shall meet the following criteria.

A. All emission reductions claimed as offset credit shall be from decreases of the same pollutant for which the offset is required.

B. All emission reductions claimed as offset credit shall occur prior to or concurrent with the start of operation of the proposed source. In addition, past reductions must have occurred later than the date upon which the area became nonattainment in order to be creditable.

C. For the case where emission reductions claimed as offset credit occur at the source subject to this part, such reductions shall be a condition required by a federally enforceable permit. For the case where emission reductions claimed as offset credit occur at a neighboring source, such reductions shall be incorporated as modifications to pertinent federally enforceable permits held by the neighboring source. If the neighboring source has no relevant permits, the reductions shall be approved as a revision to the state implementation plan by the board.

D. Offset credit for any emissions reduction can be claimed only to the extent that the department or U.S. EPA has not relied on it in previously issuing any permit or in demonstrating attainment or reasonable further progress.

E. No emissions reduction credit shall be allowed for replacing one volatile organic compound with another of lesser reactivity, except as approved by the U.S. EPA reactivity guidance found at 42 Federal Register 35314, (1977), and any amendments thereto.

F. Emission reduction credit may be allowed for a source permanently curtailing production or operating hours below baseline levels provided that the work force to be affected has been notified of the curtailment.

(1) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this paragraph, a permitting authority may choose to consider a prior

shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown or curtailed sources.

(2) Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions of Paragraph (1) are observed.

G. Where the most stringent emissions limit which is applicable allows greater emissions than the potential to emit of the offsetting source, emission offset credit will be allowed only for control below the potential to emit of the source.

H. The emission limit for determining emission offset credit involving an existing fuel combustion source shall be the most stringent emission standard which is applicable for this source for the type of fuel being burned at the time the permit application is filed. If the existing source commits to switch to a cleaner fuel, emission offset credit based on the difference between the allowable emissions of the fuels involved shall be acceptable only if an alternative control measure, which would achieve the same degree of emission reduction should the source switch back to a fuel which produces more pollution, is specified in a permit issued by the department.

I. The owner or operator desiring to utilize an emission reduction as an offset shall submit to the department the following information:

(1) a detailed description of the process to be controlled and the control technology to be used; and

(2) emission calculations showing the types and amounts of actual emissions to be reduced; and

(3) the effective date of the reduction.

J. Source shutdowns and curtailments in production or operating hours may be used for emission offset credit only if they occur after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source for which the offset is to apply is a replacement for the shutdown or curtailment.

K. The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification

and the actual emissions before the modification for each emissions unit.

20.2.79.120 Actuals plantwide applicability limits (PALs).

A. Applicability.

(1) The department may approve the use of an actuals PAL for any existing major stationary source (except as provided in Paragraph (2) of this subsection) if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

(2) Actuals PALs shall not be allowed for VOC or NOx for any major stationary source located in an extreme ozone nonattainment area.

(3) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

(a) is not a major modification for the PAL pollutant;

(b) does not have to be approved through the requirements of this part; and

(c) is not subject to the provisions in 20.2.79.110 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major new source review program).

(4) Except as provided under Subparagraph (c) of Paragraph (3) of this subsection, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions. When a term is not defined in this subsection, it shall have the meaning given in 20.2.79.7 NMAC or in 20.2.2 NMAC.

(1) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit the PAL pollutant.

(2) Allowable emissions means "allowable emissions" as defined in 20.2.79.7 NMAC, except as this definition is modified according to the following.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in this part, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(3) Small emissions unit means an emissions unit that emits or has the

potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection AM of 20.2.79.7 NMAC or in the federal Clean Air Act, whichever is lower.

(4) Major emissions unit means:

(a) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the federal Clean Air Act for nonattainment areas; for example, in accordance with the definition of major stationary source in Section 182 (c) of the federal Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(5) Plantwide applicability limitation (PAL) means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this section.

(6) PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) PAL effective period means the period beginning with the PAL effective date and ending 10 years later.

(8) PAL major modification means, notwithstanding the definitions for major modification and net emissions increase in 20.2.79.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) PAL permit means the major new source review permit, the minor NSR permit, or the state operating permit under the requirements of 20.2.72 NMAC, 20.2.74 NMAC, 20.2.79 NMAC, or the title V permit under the requirements of 20.2.70 NMAC issued by the department that establishes a PAL for a major stationary source.

(10) PAL pollutant means the pollutant for which a PAL is established at a major stationary source.

(11) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection AM of 20.2.79.7 NMAC or in the federal Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that

would qualify the unit as a major emissions unit as defined in Paragraph (4) of Subsection B of this section.

C. Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval.

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit.

(2) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of this section.

D. General requirements for establishing PALs.

(1) A PAL at a major stationary source may be allowed by the department, provided that at a minimum, the following requirements are met.

(a) The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of this section.

(c) The PAL permit shall contain all the requirements of Subsection G of this section.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the

major stationary source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of this section for each emissions unit under the PAL through the PAL effective period.

(2) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 20.2.79.115 NMAC unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

E. Public participation requirement for PALs. PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department shall address all material comments before taking final action on the permit.

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in 20.2.79.7 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under 20.2.79.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level

that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of this subsection, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

G. Contents of the PAL permit. The PAL permit shall contain, at a minimum, all of the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of Subsection I of this section.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of this section.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Subsection L of this section.

(8) A requirement to retain the records required under Subsection M of this section on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of this section by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

H. PAL effective period and reopening of the PAL permit.

(1) PAL effective period. The permit shall specify a PAL effective period of 10 years.

(2) Reopening of the PAL permit.

(a) During the PAL effective period, the department shall reopen the PAL permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 20.2.79.115 NMAC; or

(iii) revise the PAL to reflect an increase in the PAL as provided under Subsection K of this section.

(b) The department may reopen the PAL permit for the following:

(i) to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source under this part; or

(iii) to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Item (i) of Subparagraph (a) of this paragraph for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Subsection E of this section.

I. Expiration of a PAL.

Any PAL which is not renewed in accordance with the procedures in Subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply.

(1) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of

the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of this section, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (a) of Paragraph (1) of this subsection, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major new source review requirements if such change meets the definition of major modification in 20.2.79.7 NMAC.

(5) The major stationary source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 20.2.79.109 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (3) of Subsection A of this section.

J. Renewal of a PAL.

(1) The department shall follow the procedures specified in Subsection E of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(2) Application deadline. A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6

months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(3) Application requirements. The application to renew a PAL permit shall contain the following information.

(a) The information required in Paragraphs (1) through (3) of Subsection C of this section.

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(d) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(4) PAL adjustment. In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraph (a) of this paragraph. However, in no case may any such adjustment fail to comply with Subparagraph (b) of this paragraph.

(a) If the emissions level calculated in accordance with Subsection F of this section is equal to or greater than 80 percent of the PAL level, the department may:

(i) renew the PAL at the same level without considering the factors set forth in Item (ii) of this subparagraph; or

(ii) set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(b) Notwithstanding Subparagraph (a) of this paragraph:

(i) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Subsection K of this section (increasing a PAL).

(5) If the compliance date for a New Mexico or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such require-

ment, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

K. Increasing a PAL during the PAL effective period.

(1) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

(a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator shall obtain a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of Paragraph (1) of Subsection K of this section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of

BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of Subsection K of this section), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of this section.

L. Monitoring requirements for PALs.

(1) General Requirements.

(a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Subparagraphs (a) through (d) of Paragraph (2) of this subsection and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of this paragraph, the owner or operator may also employ an alternative monitoring approach that meets Subparagraph (a) of this paragraph if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(2) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of this subsection:

(a) mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

(3) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the

process; and

(c) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(4) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable performance specifications found in 40 CFR part 60, appendix B; and

(b) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(5) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(6) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not required.

(7) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of this

subsection, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(a) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(9) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every 5 years after issuance of the PAL.

M. Recordkeeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(2) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus 5 years:

(a) a copy of the PAL permit application and any applications for revisions to the PAL; and

(b) each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the requirements of 20.2.70 NMAC. The reports shall meet the following requirements.

(1) Semi-Annual Report. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information.

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of this section.

(c) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emis-

sions.

(d) A list of any emissions units modified or added to the major stationary source during the preceding 6-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of this section.

(g) A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(2) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) the PAL requirement that experienced the deviation or that was exceeded;

(c) emissions resulting from the deviation or the exceedance; and

(d) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(3) Revalidation results. The owner or operator shall submit to the department the results of any revalidation test or method within 3 months after completion of such test or method.

O. Transition requirements.

(1) The department shall not issue a PAL that does not comply with the requirements of this section after the administrator has approved these regulations.

(2) The department may supersede any PAL which was established prior to the date of approval of this part by the administrator with a PAL that complies with the requirements of this section.

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency amendment to 19.31.4 NMAC, Sections 8, 10, 11, 14, effective January 03, 2006.

19.31.4.8 TROUT WATERS AND WARM WATERS:

A. Regular trout waters:

The following are designated as regular trout waters: all streams, lakes and ponds lying within the following described areas except licensed class A lakes and lakes, ponds, and ranch tanks not fed by public waters and not open to public fishing.

(1) Northern area: That portion of New Mexico bounded by a line starting at the intersection of I-25 with the Colorado-New Mexico state line and running south along I-25 to its junction with U.S. 64; thence, south and west on U.S. 64 to its junction with N.M. 58 at Cimarron; thence, south and east on N.M. 21 to its junction with I-25; thence, south, west, and southwest on I-25 and U.S. 84-85 to its junction with U.S. 285-84 at Santa Fe; thence, north on U.S. 285-84 to its intersection with N.M. 502; thence, west on N.M. 502 to the west bank of the Rio Grande; thence, southwesterly along the west bank of the Rio Grande to its intersection with N.M. 44 at Bernalillo; thence, north and west on N.M. 44 to its intersection with U.S. 550; thence, west on U.S. 550 to the west bank of the Animas river; thence, north along the west bank of the Animas river to the Colorado-New Mexico state line; thence, east along the state line to its intersection with I-25. (Except the San Juan river from U.S. 64 bridge at Blanco downstream to N.M. 44 bridge at Bloomfield.)

(2) Ruidoso area: That portion of New Mexico bounded by a line starting at the junction of U.S. 54 and N.M. 506 and running north on U.S. 54 to its intersection with U.S. 380 at Carrizozo; thence, east on U.S. 380 to its junction with N.M. 246 at Capitan; thence, north and east on N.M. 246 to the eastern boundary of the Lincoln national forest; thence, south to Tinnie; thence, west on U.S. 380 to Hondo; thence, south on a north-south line to the junction of N.M. 24 and U.S. 82 north of Dunkin; thence south and west on N.M. 24 to Piñon; thence, south approximately one mile to N.M. 506; thence, west along N.M. 506 to its junction with U.S. 54 at Paxton.

(3) Gila area: That portion of New Mexico bounded by a line starting at the junction of U.S. 180 with the Arizona-New Mexico state line and running north along the state line to its intersection with U.S. 60; thence, east on U.S. 60 to its junction with N.M. 52 west of Magdalena; thence, south on N.M. 52 to Winston and west along the road to Chloride and the eastern boundary of the Gila national forest; thence, south along the forest boundary to its intersection with N.M. 152 east of Kingston; thence, west on N.M. 152 to its junction with U.S. 180 at Central; thence, west and northwest on U.S. 180 to its junction with the Arizona-New Mexico state line. (Except Bear canyon lake.)

(4) in Sandoval county: all of Las Huertas (Ellis creek);

(5) in San Juan county: the Animas river from the 550 highway bridge in the city of Aztec and downstream to its confluence with the San Juan river;

(6) in Torrance county: all of Tajique creek;

(7) in Union county: all of Dry Cimarron;

(8) in Cibola county: Bluewater creek;

(9) Pecos river from I-25 south to the southeast boundary of Villanueva state park;

(10) the following lakes, ponds, and reservoirs: Alice, Bluewater, Blue Hole Park ponds, Chiuilla well, Clayton, lake Farmington, Jackson, Maloya, Maxwell lake 13, McAllister, McGaffey, Power dam, Perch, Manzano, and Ramah.

(11) In Sierra county, Rio Grande from Elephant Butte dam downstream to, and including, Caballo lake.

B. Winter trout waters:

The following are designated as winter trout waters from November 1 through March 31 of the effective years: Summer lake stilling basin; that portion of the Black river extending from one mile upstream to one mile downstream of Higby hole and located in Sections 8 and 9, T. 24 S., R. 28 E., N.M.P.M., in Eddy county; that portion of the Pecos river from the southeast boundary of Villanueva state park downstream to, but not including Santa Rosa lake; the following drains: Albuquerque, Atrisco, Belen Riverside, Bernalillo, Corrales, Peralta, and Tome; and the following lakes: Bataan, Bear canyon, Bill Evans, Bosque Redondo, Bottomless lakes, Burn, Carlsbad municipal, Carrizozo, Chaparral, Conservancy park/Tingley beach, Escondida, Eunice, Greene Acres, Green Meadow, ponds on Harry McAdams park, Jal, Ned Houk lakes, Oasis park, and Van.

C. Warm waters: "Warm waters", as used herein, shall include all streams, lakes, and ponds except those designated as trout waters above, and except

licensed class A lakes.

[19.31.4.8 NMAC - Rp 19.31.4.8 NMAC, 4-15-02; A, 8-13-04; A/E, 01-03-06]

19.31.4.10 HOURS OF FISHING:

A. Day and night fishing

for all species of game fish shall be permitted in all waters during the open season, except Alto, Bonito, Butler street, and Eagle Nest lake where fish may be taken or fished for only between the hours of 5 a.m. and 10 p.m.; and U. S. fish and wildlife service waterfowl refuges where fish may be taken or fished for only during the hours posted at the refuge.

B. Fishing at Burns

canyon lake located at Parkview trout hatchery, Red River hatchery pond at the Red River state fish hatchery, Glenwood pond at the Glenwood state fish hatchery, waters within the Valle Vidal portion of the Carson national forest, and Maddox lake shall be during daylight hours only.

C. Fishing at Ned Houk

park lakes and Greene Acres shall be during the hours posted by the city of Clovis; fishing at Santa Cruz lake shall be between the hours of 6 a.m. and 10 p.m.

D. Fishing at

Conservancy park/Tingley beach shall be only between sunrise and sunset.

[19.31.4.10 NMAC - Rp 19.31.4.10 NMAC, 4-15-02; A/E, 01-03-06]

19.31.4.11 DAILY BAG AND POSSESSION LIMITS:

A. Trout

(1) Waters with reduced bag limit:

No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

(2) Brown, rainbow, cutthroat, lake, Brook trout and Kokanee salmon:

(a) The daily bag limit shall be 5 trout and no more than 10 trout shall be in possession.

(b) The daily bag limit for cutthroat trout shall be 2 trout and no more than 2 cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in 19.31.4.11(A. 2.a) NMAC (above).

(3) Special Kokanee salmon season: During the special Kokanee salmon season, the daily bag limit shall be 12 Kokanee salmon in addition to the daily bag limit for trout, and no more than 24 Kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess Kokanee salmon at Heron lake and Pine river during the closed Kokanee salmon season (October 1 through November 14).

(4) Special trout waters - On certain waters, hereafter referred to as "Special Trout Waters", the following exceptions

shall apply:

(a) On those sections of the following waters the daily bag limit shall be 2 trout and no more than 2 trout shall be in possession. Anglers must stop fishing in those waters when the daily bag limit is reached: In Rio Arriba county: all waters lying within or adjacent to the Little Chama valley ranch (Edward Sargent wildlife area) including the Rio Chamito, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake; In Colfax county: the Shuree lakes on the Valle Vidal; In Taos county: a posted portion of the Rio Pueblo between the bridge at mile marker 55 on state hwy. 518 upstream approximately 1 mile to the Canon Tio Maes trailhead; In San Miguel county: an approximately 1-1/2 mile posted portion of the Pecos river beginning approximately 1/2 mile above the confluence of the Mora river (Mora-Pecos) upstream to approximately 1/4 mile above the bridge crossing at Cowles; In Rio Arriba county: a posted portion of the Chama river approximately 2.9 miles within the boundaries of the Rio Chama wildlife and fishing area; In Catron county: a posted portion of Gilita creek from the Gila wilderness boundary downstream approximately 5 miles to its confluence with Snow creek; In Rio Arriba county: a posted portion of the Rio de los Pinos from USFS Boundary 24 at the junction of forest road 284 and 87A, 2.5 miles upstream to the private property boundary; In Taos county: a posted portion of Red River from the confluence of Goose creek 1 mile upstream.

(b) In San Juan county, in a posted portion of the San Juan river, from a point beginning approximately 1/4 mile downstream of Navajo dam and extending downstream 3.5 miles to the east side of section 16: the daily bag limit shall be 1 trout and no more than 1 trout shall be in possession except in the catch-and-release section. The angler must stop fishing in the section defined once the daily bag limit is reached.

(c) On those sections of the following waters no fish may be kept or held in possession while fishing in the posted portions of the following waters: In San Juan county: a posted portion of the San Juan river from Navajo dam downstream approximately 1/4 mile; In Sandoval county: a posted portion of the Rio Cebolla from the Seven Springs day use area upstream to its headwaters; In Sandoval County: a posted portion of the San Antonio River from the Baca location boundary downstream approximately 2.0 miles (T. 19 N., R. 03 E., S 16 and 20); In Sandoval county: a posted portion of the Rio Guadalupe from the Porter landing bridge downstream approximately 1.3 miles to Llano Loco Spring; In Taos county: a posted portion of the Rio

Costilla from the Valle Vidal tract of the Carson national forest downstream for approximately 2.4 miles to the confluence of Latir creek; In Sierra county: the Rio las Animas within the Gila national forest, Black range ranger district; In Mora county: the Pecos river in the Pecos wilderness, above Pecos falls; In Rio Arriba county: Nabor creek and Nabor lake on the Edward Sargent wildlife area; In San Miguel and Santa Fe counties: Doctor creek from 1/4 mile above its confluence with Holy Ghost creek upstream to its headwaters; In Mora county: Rio Valdez in the Pecos wilderness from 1/4 mile below Smith cabin upstream to its headwaters; In San Miguel and Mora counties: Jack's creek from the water falls located 1/4 mile downstream of NM Highway 63 crossing upstream to its headwaters; In Taos and Colfax counties: any stream on the Valle Vidal (Vermejo tract - Carson national forest).

(d) In Colfax county: on a posted section of the Cimarron river from the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64 the daily bag limit shall be 1 fish and no more than one fish may be in possession.

(e) At Conservancy park/Tingley beach in Albuquerque: the southernmost pond shall be catch-and-release only.

(5) On the following waters, the daily bag limit shall be 3 trout and no more than 3 trout may be in possession, although there are no special restrictions regarding the use of legal gear.

(a) In Taos county: a posted portion of the Rio Grande beginning at the New Mexico/Colorado state line downstream to the Taos junction bridge.

(b) In Taos county: a posted portion of the Red River beginning approximately 1/2 mile downstream of the walking bridge at Red River state fish hatchery downstream to its confluence with the Rio Grande.

(c) In Taos county: the designated fishing pond at Red River state fish hatchery.

(d) In Rio Arriba county: on a posted portion of the Rio Chama from the base of Abiquiu dam downstream approximately 7 miles to the river crossing bridge on U.S. 84 at Abiquiu.

(e) In Sierra county: the Rio Grande from Elephant Butte dam downstream to and including Caballo lake.

(f) In Lincoln county: The Rio Ruidoso from the boundary between the Mescalero Apache reservation and the city of Ruidoso downstream to Fridenbloom drive.

(g) In Rio Arriba county: Burns canyon lake at Parkview hatchery.

(6) Gila trout: It shall be unlaw-

ful for any person to possess Gila trout (*Oncorhynchus gilae*).

B. Warm-water fishes:

The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

- (1) striped bass 2 fish;
- (2) largemouth, smallmouth, and spotted bass 5 fish;
- (3) walleye 5 fish;
- (4) crappie 20 fish;
- (5) white bass and white bass x striped bass hybrid 25 fish;
- (6) northern pike 10 fish;
- (7) catfish (all species, except bullheads) 15 fish;
- (8) all other warm-water game species 20 fish.

C. The following exception shall apply:

(1) At Conservancy park/Tingley beach in Albuquerque; lake Van (Chaves county); Oasis state park; Greene Acres lake (Curry county); Burn lake (Dona Ana county); Escondida lake (Socorro county); Aztec pond (San Juan county); McGaffey lake (McKinley county); Bataan lake (Eddy county); Chaparral lake (Lea county); Bosque Redondo (De Baca county); Carrizozo lake (Lincoln county); Green Meadow lake; Eunice lake; and Jal lake (Lea county): the daily bag limit for channel catfish will be 2 fish and the possession limit shall be twice the daily bag limit.

(2) In San Juan county, in the San Juan and Animas rivers, not including Navajo lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

(3) Statewide, all tiger muskie (*Esox lucius* x *E. masquinongy*) caught must immediately be released.

[19.31.4.11 NMAC - Rp 19.31.4.11 NMAC, 4-15-02; A, 10-31-02; A, 6-25-03; A, 8-13-04; A, 5-13-05; A, 9-15-05; A/E, 01-03-06]

19.31.4.14 WATERS WITH AGE OR HANDICAPPED USE RESTRICTIONS:

A. Only persons **under 12 years of age** may fish in the following waters: Shuree kids' ponds on Valle Vidal (Vermejo tract-Carson national forest); valley improvement association ponds at Belen, Young pond in Las Cruces, Harris pond in Las Vegas, Spring river park in Roswell, Grants city pond, and the Brood pond at Seven Springs state fish hatchery.

B. Only persons **under 12 years of age, those 65 years and over, and handicapped persons** may fish in the designated Red River hatchery pond located at the Red River state fish hatchery, Blue Hole park pond (formerly Santa Rosa seniors

pond), Estancia park lake at Estancia, and in ponds located in Harry McAdams park.

C. Only handicapped persons and those under 12 years of age may fish in the Red River city ponds, and in the posted small pond at Cowles.

D. Olympic pond: Only persons under 12 years of age and those 65 years and over may fish in Olympic pond located at Angel Fire.

E. Burns canyon lake: Only persons 14 years of age and under, those 65 years and over, handicap persons, or up to two parents/guardians in direct supervision of a child or children 14 years of age and under who are fishing, may fish in Burns canyon lake located near Parkview hatchery.

F. Conservancy park/Tingley beach kids' pond: Only persons 12 years of age and under may fish in Conservancy park/Tingley beach kids' pond in Albuquerque.

[19.31.4.14 NMAC - Rp 19.31.4.14 NMAC, 4-15-02; A, 10-31-02; A, 8-13-04; A, 5-13-05; A/E, 01-03-06]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.10 NMAC, Section 18, effective January 17, 2006.

19.31.10.18 FISHING:

A. Angling: Game fish may be taken by angling in all waters that are open for fishing.

B. Trotlines:

(1) ~~[It shall be unlawful]~~ It is unlawful for any person to set more than one trotline at a time. ~~[It shall be unlawful]~~ It is unlawful to tie or join together trotlines belonging to two or more persons.

(2) ~~[It shall be unlawful]~~ It is unlawful for trotlines to have more than 25 hooks.

(3) A person fishing with a trotline shall personally visit and inspect the trotline at least once every 24 hours. Failure to check a trotline every 24 hours is a violation of this paragraph.

(4) ~~[It shall be unlawful]~~ It is unlawful for anyone to tamper with another's trotline.

(5) A person fishing with a trotline shall attach to it an identification tag that is visible above the water line. The identification tag shall bear the fisherman's name, address, fishing license number, and the date the trotline was set. An unlicensed fisherman under 12 years of age shall also list his date of birth.

(6) ~~[It shall be unlawful]~~ It is unlawful to set or use a trotline in trout waters, with the following exceptions:

Abiquiu lake, Chama river downstream from the northern boundary of the Monastery of Christ in the desert, Gila river downstream from its junction with its east fork, Navajo Lake and the Rio Grande downstream from its junction with the Chama river.

(7) Any conservation officer or other officer authorized to enforce the game laws may seize and confiscate any trotlines not set in accordance with this subsection.

C. Illegal device or substance: ~~[It shall be unlawful]~~ It is unlawful to use any device or substance capable of catching, stupefying, or killing fish except as permitted by regulation.

D. Bait: ~~[It shall be unlawful]~~ It is unlawful to use protected fish, bullfrogs, or bullfrog tadpoles as bait in any waters containing protected species. EXCEPTION: the genus *Lepomis* may be used as cut bait and roe, viscera, and eyes of legally taken game fish may be used as bait.

E. Use of bait fish:

(1) ~~[It shall be unlawful]~~ It is unlawful to use gar (*Lepisosteus* spp.) and goldfish (*Carassius auratus*) for bait fish in all waters.

~~[(2) Bait fish other than common carp (*Cyprinus carpio*), river carpsucker (*Carpoides carpio*), smallmouth buffalo (*Ictiobus bubalus*), or shad (*Dorosoma* spp.) may be used in the following trout waters: Abiquiu, Clayton lake, Jackson lake, lake 13 (Maxwell refuge), Navajo lake, Caballo lake, the Rio Grande downstream of the Taos junction bridge (excluding the special trout water described in 10.31.4.11 NMAC), Power dam lake, and the Animas river]~~

~~(3) Bait fish may be used in all warm waters and winter trout waters with the following exceptions:~~

~~(a) It shall be unlawful to use red shiners (*Cyprinella lutrensis*) in the Gila river and San Francisco river drainages.~~

~~(b) It shall be unlawful to use bait fish other than red shiners and fathead minnows (*Pimephales promelas*) in the Pecos river drainage downstream of the N.M. 63 bridge in Pecos.~~

~~(c) It shall be unlawful to use any bait fish in Bitter lake national wildlife refuge and Bottomless lakes state park.]~~

(2) It is unlawful to use live common carp (*Cyprinus carpio*), river carpsucker (*Carpoides carpio*), and smallmouth buffalo (*Ictiobus bubalus*) in all waters. However, these species may be used as cut bait in any water where bait may be used.

(3) It is unlawful to use bait fish in all trout waters except fathead minnows and red shiners may be used in the following trout waters: Abiquiu-Clayton lake, Jackson lake, lake 13 (Maxwell refuge), Navajo lake, Caballo lake, the Rio Grande downstream of the Taos junction bridge

(excluding the special trout water described in 19.31.4.11 NMAC), Power dam lake, and the Animas river.

(4) It is unlawful to use any bait fish in Bitter lake national wildlife refuge and Bottomless lakes state park.

(5) Bait fish may be used in all other waters with the following restrictions:

(a) In the Gila river and San Francisco river drainages only fathead minnows may be used.

(b) In the Pecos river drainage only fathead minnows and red shiners may be used.

(c) In the Rio Grande drainage only fathead minnows, red shiners, and shad may be used except in Elephant Butte and Caballo where golden shiners are also allowed.

(d) In the Canadian river drainage only fathead minnows, red shiners, and shad may be used.

(e) In the San Juan river drainage only fathead minnows and red shiners may be used.

F. Release of bait fish: ~~[It shall be unlawful]~~ It is unlawful to release any bait fish into any water containing game fish.

G. Eradication of fish: In waters where fish are being eradicated or where water shortage warrants reduction of fish numbers, the director may permit licensed fishermen and unlicensed persons under 12 years of age to take and possess game fish in numbers exceeding current bag and possession limits. In granting such permission, the director may specify bag and possession limits and manner and method of taking for such waters.

H. Bait fish for personal use: Licensed fishermen and unlicensed persons under 12 years of age may take minnows and nongame fish for personal use only. They may use angling, nets, traps, and seines. All protected species of fish taken in seines, nets, and traps shall be immediately returned to the water.

I. Illegal taking of bait fish: ~~[It shall be unlawful]~~ It is unlawful for licensed minnow dealers to take bait fish for sale from waters not specified on their licenses. They may take these fish only by use of traps, seines, and/or cast nets, as specified on their licenses. All protected species of fish taken in such traps, seines, or nets shall be immediately returned to the water from which they were taken.

J. Methods for taking bait fish: Bait fish may be taken in waters containing game fish by angling, spears, and arrows.

K. Permits for taking bait fish: The director may issue permits for the use of nets, seines, traps, or cast nets in taking bait fish in waters containing protected species of fish. The permit shall

specify methods of taking, places for taking, and duration of the permit. The permittee shall report monthly the species, numbers and poundage of nongame fish taken during the preceding month.

L. [Reserved]

M. [Reserved]

N. Number of fishing poles: ~~[It shall be unlawful]~~ It is unlawful to angle with more than one pole without having a current two rod validation or stamp affixed on the current license. ~~[It shall be unlawful]~~ It is unlawful under any circumstance to angle with more than two poles.

O. Exceeding daily bag limit: ~~[It shall be unlawful]~~ It is unlawful to exceed the daily bag limit and/or possession limit of any protected fish species, as specified in Title 19, Chapter 31, Part 4.

P. Snagging game fish: ~~[It shall be unlawful]~~ It is unlawful to snag game fish except during the special kokanee salmon season as specified in Title 19, Chapter 31, Part 4.

Q. Chumming: ~~[It shall be unlawful]~~ It is unlawful to "CHUM" except in the following waters: All waters designated as warm waters; Gila river downstream from its junction with its east fork; Rio Grande downstream from its junction with the Chama river, excluding the special trout water below Elephant Butte dam described in Subsection A of 19.31.4.11 NMAC.

R. Special trout waters: Only barbless lures or flies may be used in the special trout waters designated in Subsection A of 19.31.4.11 NMAC, except in the special trout water on the Rio Grande below Elephant Butte dam in which soft plastic lures may also be used.

S. Attracting or concentrating fish:

(1) **Artificial lights:** Use of artificial lights is permitted for attracting game fish.

(2) **Disturbing the bottom:** ~~[It shall be unlawful]~~ It is unlawful in all special trout waters defined in Subsection A of 19.31.4.11 NMAC, to disturb or dislodge aquatic plant growth, sediment, or rocks for the purpose of attracting or concentrating fish. It shall also be unlawful to angle in the immediate vicinity where such disturbance has occurred.

T. Spears, gigs, and arrows:

(1) Spears, gigs, and arrows with barbs that are discharged beneath the water may be used in all waters open to fishing.

(2) In addition, during the season established by Subsection B of 19.31.4.9 NMAC, kokanee salmon may be taken by the use of spears, gigs, and arrows with barbs that are discharged above or below the water and not driven by explosives, gas,

air, or crossbow.

U. Exemption of two rod validation requirement: A two rod validation or stamp is not required in warm waters as defined in Subsection C of 19.31.4.8 NMAC until April 1, 2004. [6-25-90; 4-1-95; 19.31.1.18 NMAC - Rn, 19 NMAC 31.1.18, 4-14-2000; 19.31.10.18 NMAC - Rn, 19.31.1.18 NMAC, 9-29-00; A 10-31-02; A 6-25-03; A, 01-17-06]

NEW MEXICO BOARD OF NURSING

16.12.4 NMAC, Certification of Hemodialysis Technicians and Training Programs (filed 06-12-2001) repealed 02-17-06 and replaced by 16.12.4 NMAC, Certification of Hemodialysis Technicians and Training Programs, effective 02-17-06.

NEW MEXICO BOARD OF NURSING

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS

PART 4 CERTIFICATION OF HEMODIALYSIS TECHNICIANS AND TRAINING PROGRAMS

16.12.4.1 ISSUING AGENCY: New Mexico Board of Nursing. [16.12.4.1 NMAC - Rp, 16.12.4.1 NMAC, 02-17-06]

16.12.4.2 SCOPE: All New Mexico board of nursing approved hemodialysis training programs and hemodialysis technicians certified by the New Mexico board of nursing. [16.12.4.2 NMAC - Rp, 16.12.4.2 NMAC, 02-17-06]

16.12.4.3 STATUTORY AUTHORITY: Nursing practice act, 61.3.10, 1 NMSA 1978 Comp. [16.12.4.3 NMAC - Rp, 16.12.4.3 NMAC, 02-17-06]

16.12.4.4 DURATION: Permanent. [16.12.4.4 NMAC - Rp, 16.12.4.4 NMAC, 02-17-06]

16.12.4.5 EFFECTIVE DATE: February 17, 2006, unless a later date is cited at the end of a section [16.12.4.5 NMAC - Rp, 16.12.4.5 NMAC, 02-17-06]

16.12.4.6 OBJECTIVE: To provide a means by which to evaluate

hemodialysis training programs and measure competency of hemodialysis technicians completing the program and the authority to take action against any approved program or certified hemodialysis technician not meeting the set minimum standards for approval or certification as promulgated by the board. [16.12.4.6 NMAC - Rp, 16.12.4.6 NMAC, 02-17-06]

16.12.4.7 DEFINITIONS:

A. "Agency": a board approved facility that utilizes hemodialysis technicians who serve consumers in various health care and community settings.

B. "Approval": the review and acceptance of specific activity.

C. "Audit": a verification of continuing education documents and work requirements.

D. "Board": New Mexico board of nursing. (BON)

E. "Certificate": a document issued by the board identifying the legal privilege and authorization to perform specific nursing functions and procedures in the state of New Mexico.

F. "Certification examination": a board-approved tool designed to evaluate an applicant's knowledge of a specific subject.

G. "Certified hemodialysis technician (CHT)": a person who is certified by the board to assist with the direct care of a patient undergoing hemodialysis, certification is mandatory in New Mexico according to the standards outlined in these rules.

H. "Certified hemodialysis technician II (CHT II)": a person who meets the requirements of a CHT to receive additional training with an expanded scope of practice; additional certification is mandatory.

I. "Clinical experience": refers to the supervised teaching-learning component of the training program which takes place in the hemodialysis agency.

J. "Clinical preceptor": a licensed nurse who supervises and observes students providing patient care in a hemodialysis agency.

K. "Competency": the demonstration of knowledge in a specific area and the ability to perform specific skills and tasks in a safe, efficient manner.

L. "Consumer": means any person domiciled, residing or receiving care or treatment from a certified hemodialysis technician in an agency. This includes but is not limited to patients or clients.

M. "Continuing education": (CE) planned learning experiences beyond a basic nursing or technician educational program. These experiences are

designed to promote the development of knowledge, skills and attitudes for the enhancement of care to the consumer.

N. "Contact hour": a sixty (60) minute clock hour.

O. "Curriculum": a detailed course outline, description or syllabus, which, includes objectives, content, teaching-learning activities and evaluation strategies, and includes the minimum required program hours.

P. "Delegation": means transferring to a competent individual the authority to perform a delegated nursing tasking in a selected situation. The licensed nurse retains accountability for the delegation.

Q. "Faculty": any professional and/or paraprofessional persons who teach for the hemodialysis technician training program including clinical preceptors.

R. "Hemodialysis technician advisory committee (HTAC)": a board-appointed committee.

S. "Hemodialysis technician participant program": any agency that utilizes certified hemodialysis technician and does not have a board-approved hemodialysis technician training program that prepare individuals for initial certification. A board approved nurse educator is required for supervision and observation of the hemodialysis technician.

T. "Hemodialysis technician training program": an educational program approved by the board for persons seeking initial certification as hemodialysis technicians.

U. "License": a document identifying the legal privilege and authorization to practice within a professional category.

V. "Multiple certification": certified hemodialysis technicians who have a current CHT certificate in good standing and successfully complete the required training to work as a CHT II.

W. "NPA": Nursing Practice Act.

X. "Nurse educator": the registered nurse who is responsible for the development, implementation and evaluation of a hemodialysis technician training program. Retains ultimate responsibility for determining hemodialysis technicians competency.

Y. "Reactivation": the process of making a certificate current which has been in abeyance as a result of failure to comply with the necessary renewal requirements; this action does not involve board action.

Z. "Reinstatement": the process whereby a certificate which has been subject to revocation or suspension is returned to its former status by individual board action; this process always involves

board action.

AA. "Site visit": visit made directly to the training and participant program by board staff.

BB. "Supervision": means initial verification of a person's knowledge and skills in the performance of a specific function or activity followed by periodic observation, direction and evaluation of that person's knowledge and skills as related to the specific function or activity.

CC. "Standards of function": a range of tasks or activities performed by certified hemodialysis technicians for consumers who are stable and predictable, supervised by a licensed nurse who may need to limit the range of tasks based on the consumer's need or add via delegation.

DD. "ULA": means the Uniform Licensing Act.

[16.12.4.7 NMAC - Rp, 16.12.4.7 NMAC, 02-17-06]

16.12.4.8 FEES:

A. Payment of fees will be accepted in the form as specified by the board. Fees are not refundable.

(1)	Initial	certification	by	examination.....	\$ 45.00
(2)				Re-examination.....	\$ 30.00
(3)	Renewal		of	certificate.....	\$ 45.00
(4)	Reactivation/reinstatement		of	certificate.....	\$ 60.00
(5)	Duplicate	license	(written request required).....		\$ 20.00
(6)	Initial	program	review	for approval.....	\$250.00
(7)	Biennial	program	evaluation	and visit.....	\$200.00
(8)	Initial	participant	program	evaluation.....	\$200.00
(9)	Biennial	participant	program	evaluation.....	\$175.00
(10)	Additional		certificate	for CHTII.....	\$ 20.00

B. Annual agency participation fees are determined by a three-step process.

(1) Each agency plus its satellites is assigned a unit value based on the total number of sites where CHTs are utilized.

(2) The total board of nursing administrative cost is divided by the total number of units assigned to all agencies to determine the cost per unit. (Cost per unit = total bon administrative costs (by total number of units).

(3) The cost per agency is then determined by multiplying the cost per unit by the unit value assigned to that agency. (Cost per agency = number of assigned unit per one agency x cost per unit).

[16.12.4.8 NMAC - Rp, 16.12.4.8 NMAC, 02-17-06]

16.12.4.9 CERTIFICATION REQUIREMENTS FOR HEMODIALYSIS TECHNICIANS: New Mexico certification of hemodialysis technicians is mandatory.

A. Prerequisites.

(1) Be a high school graduate or complete the general education development course.

(2) Successfully complete a board-approved hemodialysis technician training program.

(3) Complete the required application form in the specified deadline and remit the required fee.

B. Applications and fees for the hemodialysis technician certification examination must be submitted to the board office at least thirty (30) days prior to the date of the examination.

(1) Applications containing fraudulent or misrepresented information could be the basis for denial of certification.

(2) Incomplete applications for certification become null and void one (1) year after date of last noted activity.

(3) Verification of successful completion indicating the date of completion of the hemodialysis technician program must be received, directly from the hemodialysis techni-

cian training program, in the board office at least thirty (30) days prior to the examination date.

(4) An admission letter, which includes the time, date and place of examination, shall be issued to all eligible applicants.

(5) A reexamination fee will be charged for all reexaminations and non-excused absences.

(6) Results of the examination shall be reported, by mail only, to the applicants no later than four (4) weeks following the examination date. Applicants who successfully complete the examination shall be issued a certificate.

(7) Successful completion of the examination can be verified on the board's website.

C. Hemodialysis Technician Initial Certification Examination.

(1) The board shall develop and maintain the board-approved certification examination for hemodialysis technicians.

(2) Board approved examination centers shall comply with the security procedures developed by the board for distribution and administration of the examination.

(3) The examination shall be administered six (6) times each year and as needed.

(4) The hemodialysis technician advisory committee shall set the examination dates.

(5) Applicants for certification as a hemodialysis technician shall be required to pass the hemodialysis technician certification examination with a minimum score of 75 %.

(6) Applicants who fail the examination may repeat the examination one (1) time within a six (6) month period without repeating an approved training program.

(a) Applicants who fail the examination may not function as hemodialysis technicians.

(b) Applicants must remain under the direct supervision of a board-approved clinical preceptor until such time as they successfully pass the hemodialysis technician certification examination.

(7) Applicants observed giving and/or receiving unauthorized assistance during the writing of the examination shall be physically removed from the examination center and the individual(s) shall be referred to the board by a sworn complaint filed by the examiner.

D. Certification by examination for CHT II.

(1) CHT II shall be required to pass a certification examination with a minimum score of 80% that is specific to their expanded scope of practice as defined in the core curriculum (16.12.5.16 NMAC).

(2) CHT II applicants who fail the exam may repeat the examination one (1) time within a six month period without repeating an approved training program. If the CHT II does not pass the second examination they must take a refresher course specific to the expanded scope of practice and wait one year from first test date to retake the examination.

E. Requirements for hemodialysis technicians' recertification.

(1) Applicants for recertification shall be required to complete the process by the end of their renewal month, every two years and must meet the continuing education and work requirements as stated in these rules.

(2) Renewal applications and continuing education verification forms shall be mailed to CHTs at least six (6) weeks prior to the end of the renewal month.

(a) Failure to receive the application for renewal shall not relieve the CHT of the responsibility of renewing the certificate by the expiration date.

(b) If the certificate is not renewed by the end of the renewal month, the CHT does not hold a valid certificate and shall not function as a CHT in New Mexico until the lapsed certificate has been reactivated.

(3) Continuing Education Requirements.

(a) Sixteen (16) contact hours of continuing education must be accrued within the 24 months immediately preceding recertification.

(b) Acceptable courses shall be those with topics related to care and safety of the patient undergoing dialysis treatment.

(c) Continuing education records are subject to audit by the board. Certificate holders may be subject to disciplinary action by the board if non compliant within sixty (60) days of the first notification of the audit.

(d) CHT II shall accrue four (4) additional contact hours of continuing education within the 24 months preceding recertification. These additional contact hours must be specific to their expanded scope of function.

(4) Work requirement. Applicant must provide evidence of a minimum of 1,000 hours work as a CHT during the 24 month period immediately preceding certification renewal.

(a) Work requirement records are subject to audit by the board.

(b) Certificate holders may be subject to disciplinary action by the board if noncompliant within sixty (60) days of the first notification of the audit.

(5) Remit the required recertification fee.

(6) Failure to meet the continuing education or employment requirements for recertification shall result in denial of recertification until completion of a refresher course with the appropriate application and fee have been submitted to the board.

F. Refresher course requirements.

(1) Completion of a minimum of eighty (80) hours of supervised clinical practice in a board approved hemodialysis technician training program under the supervision of an approved clinical preceptor.

(2) Completion of the hemodialysis technician training program's skills list identified in the core curriculum (16.12.5.16 NMAC).

(3) Completion of the hemodialysis technician training program final examination with a minimum score of 75 %.

(4) Written verification, on agency letterhead, of successful completion of supervised clinical practice, skills list, and the final examination shall be provided to the board by the training program's board-approved nurse educator.

(5) Completion of a refresher course shall meet both the employment and continuing education requirements for the two (2) year renewal period.

(6) Remit the required application and fee.

G. Individuals who have practiced as uncertified hemodialysis technicians in other states or who have been certified in another state may apply for certification in the state of New Mexico.

(1) Provide written verification of the completion of a hemodialysis technician training program in another state.

(2) Submit written verification of 1000 hours working as a hemodialysis technician during the 24 month period immediately preceding their request to become certified in New Mexico.

(3) Complete a minimum of eighty (80) hours of supervised clinical practice in a board approved hemodialysis technician training program under the supervision of a board approved nurse educator.

(4) Complete the hemodialysis technician training program's skills list identified in the core curriculum (16.12.5.16 NMAC).

(5) Successfully pass the training program's final examination with a minimum score of 75% or better.

(6) Provide written verification, on agency letterhead, of successful completion of supervised clinical practice, skills list, the final examination and that the candidate has met the work requirement.

(7) Pass the board's hemodialysis certification examination with a minimum

score of 75 % or better.

(8) Certificates are issued by mail only. Verification can be obtained on the board website.

H. Individuals who have practiced as hemodialysis technicians and have a current national hemodialysis technician certification may apply for certification as a hemodialysis technician in New Mexico.

(1) Provide written verification of the completion of a hemodialysis technician training program in another state.

(2) Submit written verification of 1000 hours working as a hemodialysis technician during the 24 month period immediately preceding their request to become certified in New Mexico.

(3) Complete a minimum of eighty (80) hours of supervised clinical practice in a board approved hemodialysis technician training program under the supervision of an approved nurse educator.

(4) Complete the hemodialysis technician training program's skills list identified in the core curriculum (16.12.5.16 NMAC).

(5) Successfully pass the training program's final examination with a score of 75% or better.

(6) Provide written verification, on agency letterhead, of successful completion of supervised clinical practice, skills list, the final examination and that the candidate has met the work requirement.

(7) Submit the required application and fee.

(8) Certificates are issued by mail only. Verification can be obtained on the board website.
[16.12.4.9 NMAC - Rp, 16.12.4.9 NMAC, 02-17-06]

16.12.4.10 STANDARDS OF FUNCTION FOR THE CERTIFIED HEMODIALYSIS TECHNICIAN:

A. Purpose.

(1) To establish standards for supervision and direction of the CHT.

(2) To identify basic functions for the CHT.

(3) To identify prohibited functions for the CHT.

(4) To identify the expanded role of the CHT II.

B. Authorized functions of the certified hemodialysis technician with supervision of a registered nurse:

(1) perform arteriovenous punctures for dialysis access;

(2) inject intradermal lidocaine in preparation for dialysis access;

(3) administer a heparin bolus;

(4) administer a fluid bolus of isotonic saline;

(5) connect a dialysis access to isotonic saline or heparinized isotonic

saline;

(6) administer oxygen, metered dose inhalants;

(7) collect data for the nursing assessment;

(8) initiate and discontinue treatment via arterio-venous access.

C. Prohibited functions of the certified hemodialysis technician:

(1) shall not administer medications by oral, intramuscular, intravenous or subcutaneous routes except those agents addressed in authorized functions of these rules;

(2) shall not take orders for dialysis treatments;

(3) shall not alter dialysis orders as prescribed by a health care provider;

(4) shall not perform any function or service for consumer for which a nursing license is required under the Nursing Practice Act, 61-3-1 et seq NMSA, 1978;

(5) shall not initiate or discontinue via central lines.

D. Supervision or direction of the hemodialysis technician.

(1) A nurse educator shall periodically provide supervision or direction to the certified hemodialysis technician.

(2) The nurse educator may delegate to the licensed nurse the supervision or direction of the hemodialysis technician.

E. Certified hemodialysis technician II - expanded scope of function.

(1) The expanded role is a privilege and not a requirement for all CHT's to meet.

(2) The nurse educator shall approve the CHT assuring the CHT meets specific criteria.

(a) CHT must be employed full-time for 3 consecutive years in dialysis.

(b) CHT must be working at least one year at the current board approved training agency.

(c) Must fulfill all CHT requirements and be in good standing with the board.

(3) Authorized functions shall include performing hemodialysis treatment via central catheter lines

(4) Prohibited functions shall not perform catheter dressing changes.

(5) Must complete board approved curriculum and pass the board examination with 80% or better.

[16.12.4.10 NMAC - Rp, 16.12.4.10 NMAC, 02-17-06]

16.12.4.11 DISCIPLINARY ACTION:

The board shall conduct hearings upon charges relating to discipline of a CHT, and may deny, place on probation, suspend or revoke a hemodialysis technician certificate in accordance with the Uniform Licensing Act 61-1-1 et seq NMSA, 1978.

A. Grounds for disciplinary action.

(1) Incapable of functioning as a CHT which is defined to include, but not limited to, the following:

(a) inability to function with reasonable skill and safety as a CHT for any reason including, but not limited to, the use of drugs, alcohol or controlled substances which could impair judgment;

(b) performance of unsafe or unacceptable care of consumers receiving dialysis treatments or failure to conform to the essential and prevailing standards of CHTs;

(c) omitting in a negligent fashion to record information regarding procedures performed and care provided which could be relevant to the consumer's care;

(d) failure to report information regarding the consumer's treatment and/or health status to appropriate person which could be relevant to the consumer's care and status;

(e) demonstrating a lack of competence in providing care to consumer's receiving a dialysis treatment.

(2) Incapable of functioning as responsible member of the health care team which is defined to include, but not limited to, the following:

(a) falsifying or altering consumer records or personnel record for the purpose of reflecting incorrect or incomplete information;

(b) misappropriation of money, drugs, or property;

(c) obtaining or attempting to obtain any fee for consumer services for one's self or for another through fraud, misrepresentation or deceit;

(d) obtaining, possessing, administering or furnishing prescription drugs to any person, including, but not limited to one's self, except as directed by a person authorized by law to prescribe;

(e) obtaining or attempting to obtain a certificate to function as a CHT for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the certification by examination or recertification process;

(f) functioning as a CHT in NM without a valid, current NM certificate, or aiding, abetting or assisting another to function as a CHT without a valid, current NM certificate;

(g) failure to report a CHT who is suspected of violating the NPA and/or rules for certification of hemodialysis technicians;

(h) exceeding the scope of function of a CHT;

(i) intentionally abusing, neglecting or exploiting a consumer;

(j) intentionally engaging in sexual contact toward or with a consumer in a

manner that is commonly recognized as outside of the CHT's scope of tasks;

(k) felony conviction.

B. Disciplinary proceedings: are conducted in accordance with 16.12.2 NMAC Nurse Licensure. [16.12.4.11 NMAC - 16.12.4.11 NMAC, 02-17-06]

16.12.4.12 APPROVAL FOR HEMODIALYSIS TRAINING PROGRAMS:

A. Statement of purpose: The purpose of this article is to establish minimum standards for the approval of hemodialysis technician training programs and hemodialysis participant programs that protect the health and well-being of the consumers that receive services from hemodialysis technicians in board approved programs. The objectives include promoting safe and effective care of consumers receiving care from hemodialysis technicians; establishing minimal standards for the evaluation and approval of hemodialysis programs; granting recognition and approval that a hemodialysis program is meeting minimum standards; and establishing the eligibility of graduates of the training program to apply for certification. [NPA 61-3-10.1 NMSA, 1978].

B. Hemodialysis participant programs shall meet all criteria for approval except those that are specific to the education/training components of the hemodialysis training programs that prepare individuals for initial certification as hemodialysis technicians. Participant programs are subject to denial or withdrawal of program approval, program visits, and shall notify the board of nursing regarding changes in internal administrative or organization plan of the agency, and change in the nursing supervisor responsible for the supervision of the hemodialysis technician program.

C. Objectives.

(1) To promote safe and effective care of consumers receiving hemodialysis.

(2) To establish minimum standards for the evaluation and approval of hemodialysis technician training programs.

(3) To facilitate continued approval of hemodialysis technician training programs.

(4) To grant recognition and verification that a hemodialysis technician training program meets the minimum standards and rules as determined by the board.

D. Initial Program Approval. A dialysis unit who is licensed by the New Mexico department of health, in order to obtain approval of its hemodialysis technician training program or participant program shall submit an application for approval to the board's hemodialysis technician advisory committee. The HTAC shall evaluate the application, provide for a site visit to the dialysis unit and make a recommendation to the board regarding the approval of the training program. The board shall approve hemodialysis technician training programs at a regularly scheduled board meeting.

(1) The initial application shall be consistent with the minimum standards for approval of hemodialysis technician training programs (16.12.4.14 NMAC), and shall contain the following:

(a) objectives of the training program;

(b) organizational chart;

(c) name of the medical director, administrator, and nursing director;

(d) names and resumes of the nurse educator(s) and other faculty to include clinical preceptor(s);

(e) verification of state licensure;

(f) program curriculum; and

(g) hemodialysis technician job description.

(2) Representatives of the training program may be scheduled to meet with the HTAC to present the proposed program.

(a) Following the HTAC review of the application, a recommendation for approval shall be made to the board of nursing.

(b) Programs not recommended for approval must provide evidence that the identified deficiencies have been corrected.

(3) After receipt of the HTAC report and recommendation(s), the board may:

(a) grant approval of the program;

(b) defer a decision regarding approval;

(c) deny approval;

(d) direct staff to make a pre-approval visit.

E. Criteria for approval, probationary approval, and denial or withdrawal of approval.

(1) Criteria for approval.

(a) Approval shall be granted for no more than two (2) years to a training program when, in the opinion of the board, the program demonstrates compliance with the minimum standards for approval of hemodialysis technician training programs.

(b) To ensure continued compliance with the minimum standards for approval, the training program shall be evaluated at least every two (2) years with a site visit or as directed by the board.

(c) During the period of approval and prior to the expiration of approval, a self-evaluation report shall be submitted to the hemodialysis technician advisory committee and a site visit shall be made to the program. Whenever possible the site visit should be made to the program when a

training session is in progress.

(d) After the review of the self-evaluation and report of the site visit by the HTAC a report shall be made to the board regarding continuation of the training program's approval.

(e) The board is the final authority regarding continued approval or probation.

(f) The board may authorize unannounced site visits be made to the approved hemodialysis technician training programs.

(2) Criteria for probationary approval.

(a) A training program may be given probationary approval when there is evidence of:

(i) substantial noncompliance with the minimum standards for approval of hemodialysis technician training programs;

(ii) continuous disruptions in retaining qualified faculty resulting in disorganization of the program and a breakdown of supervision and teaching of the program;

(iii) noncompliance with the training program's stated philosophy, objectives, policies and curriculum resulting in unsatisfactory student achievement;

(iv) failure to provide clinical experiences or supervision necessary to meet the objectives of the training program;

(v) failure of 75% of first time writers of the examination to correctly answer at least 75% of the items over a one year period.

(b) The training program shall be advised, in writing, of the reason(s) for the probationary approval.

(c) The board shall designate a reasonable time period, not to exceed one year, in which the training program must correct deficiencies and meet the minimum standards for approval.

(d) At least sixty (60) days prior to the end of the probationary approval, the training program shall submit a self-evaluation which includes a description of changes made to correct the deficiencies, and a site visit shall be made by representatives of the board.

(e) The HTAC shall review the site visit evaluation, and shall submit a report to the board.

(f) The board may grant approval to the training program, extend the probationary approval or it may withdraw approval of the program.

(3) Criteria for denial or withdrawal of approval.

(a) The board may deny approval of a training program when a program fails

to provide evidence of compliance or fails to correct deficiencies resulting in noncompliance with the minimum standards for approval of hemodialysis technician training programs.

(b) A written notice detailing the reasons for denial or withdrawal of approval shall be provided to the agency.

(c) The training program shall be removed from the list of board approved hemodialysis technician training programs. [16.12.4.12 NMAC - Rp, 16.12.4.12 NMAC, 02-17-06]

16.12.4.13 CHANGES REQUIRING NOTIFICATION TO THE ADVISORY COMMITTEE OR BOARD OF NURSING FOR APPROVAL:

A. Program changes requiring approval of the board of nursing:

(1) major curriculum changes or reorganization of the curriculum;

(2) major changes in the program's objectives or goals;

(3) changes in required didactic and/or clinical practice hours;

(4) changes in the nurse educator;

(5) changes in the hemodialysis technician job description.

B. Procedure for requesting board approval for program changes.

(1) The advisory committee shall be notified in writing of changes in the program requiring board approval. The notification shall include:

(a) the proposed change(s);

(b) rationale for the proposed change(s);

(c) anticipated affect on the current training program; and

(d) timetable for implementation of the proposed change(s);

(e) presentation of the differences between the current system and proposed change(s);

(f) method of evaluation which will be used to determine the effect of the change;

(g) a description of the study and/or method used to determine need for a change;

(h) plans for continuing to meet the; minimum standards for approval of the hemodialysis technician training program.

(2) The advisory committee shall present the changes and recommendations to the board of nursing at a regularly scheduled board meeting.

C. Changes requiring notification to the advisory committee and board of nursing.

(1) Changes in the internal administration or organizational plan of the hemodialysis clinic or unit which affects the training program.

(2) Changes in the state of New Mexico, department of health licensure sta-

tus.

[16.12.4.13 NMAC - Rp, 16.12.4.13 NMAC, 02-17-06]

16.12.4.14 MINIMUM STANDARDS FOR APPROVAL OF HEMODIALYSIS TECHNICIAN TRAINING PROGRAMS:

A. Objectives. There shall be written objectives for the training program which serve as the basis for planning, implementing and evaluating the program.

(1) The objectives shall be developed by the nurse educator.

(2) The training program objectives shall describe the knowledge and skills expected of the CHT, and shall be consistent with the authorized functions of the CHT and the board approved core curriculum.

(3) The training program objectives shall be reviewed annually and revised as necessary by the nurse educator.

B. Curriculum.

(1) The curriculum shall be developed, implemented and evaluated by the nurse educator within the framework of the rules and the core knowledge statements.

(2) The curriculum shall extend over a period of time sufficient to provide essential, learning experiences which enable a student to develop competence in hemodialysis practice.

(3) There shall be a minimum of eighty (80) hours of classroom study, and a minimum of one-hundred sixty (160) hours of supervised clinical experience.

(4) Supervised clinical experience shall provide opportunities for the application of theory and for the achievement of stated objectives in a health care setting and shall include clinical learning experiences to develop the skills required by technicians to provide safe care. The nurse educator or clinical preceptor must be physically present and accessible to the student when the student is in the patient care area.

(5) The nurse educator shall develop a written systematic plan for curriculum and program evaluation.

(6) The CHT II curriculum shall include a minimum of sixteen (16) additional hours of classroom study and a minimum of eighty (80) hours of supervised clinical experience. There shall be as a minimum twenty (20) times the technician initiates, monitors and disconnects the central catheter line for one patient or treatment. The nurse educator must verify the successful completion of training with a written letter to the board with the application to test and receive certification as a CHT II.

C. Administration and organization.

(1) The hemodialysis technician training program shall be an integral part of a hemodialysis agency.

(2) Each program shall have a

board approved nurse educator to administer the training program who shall be responsible for the development, implementation, teaching and evaluation of the training program, arrangements for and supervision of student's clinical experiences and communication with the board and the hemodialysis technician advisory committee.

D. Qualifications and competencies of faculty.

(1) The nurse educator shall be a registered nurse and shall hold a current license to practice nursing in New Mexico or hold a current compact state license.

(2) The nurse educator shall have at least two (2) years of recent nursing practice experience including at least one (1) year of nursing experience in dialysis. Previous nursing experience in critical care and nursing education is desirable.

(3) The nurse educator shall have a minimum of nine (9) contact hours of continuing education annually in nephrology, or have current national certification in nephrology or dialysis.

(4) All new approved nurse educators shall participate in an orientation that is presented by the board staff.

(5) Clinical preceptor(s) shall be a registered nurse or licensed practical nurse, and shall hold a current New Mexico nursing license or hold a current compact state license.

(a) Clinical preceptors shall have a least one (1) year of nursing practice experience including at least six (6) months of nursing experience in dialysis.

(b) Clinical preceptors shall demonstrate knowledge and skills in dialysis nursing.

(6) A certified hemodialysis technician under supervision of the nurse educator or approved clinical preceptor may be assigned to assist with the clinical experience/orientation of hemodialysis technician trainees.

(7) The nurse educator or the clinical preceptor must be physically present in the agency while students are engaged in the clinical experience.

[16.12.4.14 NMAC - Rp, 16.12.4.14 NMAC, 02-17-06]

16.12.4.15 HEMODIALYSIS TECHNICIAN ADVISORY COMMITTEE

A. Composition and appointment of committee members. The board of nursing shall appoint a minimum of a five (5) member, three of which should be registered nurses, voluntary advisory committee which shall be composed of licensed nurses with expertise in dialysis nursing and certified hemodialysis technicians in New Mexico.

(1) Hemodialysis agencies shall

submit nominations for committee appointments.

(2) There shall be no more than one licensed nurse and one certified hemodialysis technician representative from any one unit serving on the advisory committee at any one time.

(3) Members of the committee shall serve for staggered terms of two (2) years, and may be reappointed to the advisory committee.

B. Responsibility of advisory committee.

(1) The advisory committee shall review applications for initial approval, program evaluations, and changes in approved hemodialysis technician program, and shall submit reports and recommendations to the board.

(2) The advisory committee shall provide consultation to training programs as requested and/or as directed by the board.

(3) Members of the advisory committee shall serve as site visitors to hemodialysis technician training programs for approval, consultation and evaluation visits.

[16.12.4.15 NMAC - Rp, 16.12.4.15 NMAC, 02-17-06]

16.12.4.16 HEMODIALYSIS TECHNICIAN CURRICULUM SUBJECT AREAS:

A. Initial certification overview of the hemodialysis technician role and responsibilities.

(1) Philosophy and objectives of the hemodialysis technician training programs to include:

(a) federal, state and local regulations;

(b) nurse's role and hemodialysis technician role including the meaning of delegation;

(c) standards of function for hemodialysis technician;

(d) certification expectations and requirements.

(2) Orientation to the hemodialysis technician position including:

(a) review of job specifications;

(b) expectation and responsibilities;

(c) role of the health care team and the hemodialysis technician:

(i) roles and contributions of other health team members;

(ii) observation and reporting.

B. Legal roles and responsibilities of hemodialysis technicians including:

(1) consumer's rights;

(2) negligence and malpractice;

(3) ethical issues relating to consumers including but not limited to:

(a) confidentiality;

(b) OSHA;

(4) documentation;

(5) identification of errors and required reporting or errors to the nurse.

C. Orientation to the client population.

(1) Identifies major anatomical components of the renal system and the role of the normal kidney in maintaining homeostasis.

(2) Recognizes the physiological changes that occur in the body as a result of End Stage Renal disease.

(3) Verbalizes the principles of hemodialysis.

(4) Recognizes the psychosocial considerations that affect the hemodialysis patient/family and lifestyle.

(5) Identifies changes in the patient's diet.

D. Introduction to dialysis therapy.

(1) Demonstrates efficient, accurate and safe preparation of the dialysis machine including but not limited to the discontinuation of dialysis.

(2) Demonstrates accurate and safe technique when performing arteriovenous punctures for dialysis access.

(3) Identifies problem patient situations and communications with licensed nurse.

(4) Identifies and responds appropriately to machine alarms and other potential emergency situations to include but are not limited to:

(a) air leaks;

(b) power failures;

(c) temperature changes;

(d) unconscious patient;

(e) needle dislodgement;

(f) air embolism.

(5) Identifies infection control principles and practices. Including but not limited to the use of personal protective equipment.

(6) Demonstrates the method of medication administration and identifies potential adverse reactions for medications used in hemodialysis therapy.

E. Hemodialysis technician procedures/skills check list for certification in New Mexico.

(1) Identification of machine parts and functions.

(2) Preparation of machine and extracorporeal circuit including disinfection of machine post dialysis.

(3) Patient assessment and equipment monitoring and testing prior to initiation of treatment.

(4) Vascular access and specimen collection.

(5) Initiation, monitoring and termination of treatment.

(6) Respond appropriately to real and potential emergency care situations that can impact the patient, staff and the physical building.

(7) Administration of routine treatment medications required for dialysis therapy.

(8) Correct practice of infection control principles.

F. Advanced certification for hemodialysis technician (CHT II) including their role and responsibilities

(1) Philosophy and objectives of the advanced hemodialysis technician training programs to include:

(a) federal, state and local regulations;

(b) nurse's role and advanced hemodialysis technician role

(c) standards of function for advanced hemodialysis technician;

(d) certification expectations and requirements.

(2) Orientation to the advanced hemodialysis technician (CHT II) position including:

(a) review of job specifications;

(b) expectation and responsibilities;

(c) role of the health care team and the hemodialysis technician:

(i) roles and contributions of other health team members;

(ii) observation and reporting.

(3) Expanded roles and responsibilities of the advanced hemodialysis technicians (CHT II) including:

(a) consumer's rights;

(b) negligence and malpractice;

(c) ethical issues relating to consumers including but not limited to confidentially and OSHA;

(d) documentation;

(e) identification of errors and required reporting or errors to the nurse.

(4) Review the concepts and practices of infection control.

(5) Understand the principles and rationale for the clamping and care of central venous line catheters.

(a) Positive thoracic pressure.

(b) Risk of complications with clamping/unclamping catheters.

(c) Antiseptic solutions and catheter material.

(6) Understanding and administering anticoagulants to central venous lines.

(a) Pre-dialysis blood work.

(b) Identification of arterial and venous lines.

(c) Connection to dialysis blood lines.

(7) Preparation, initiation, monitoring and termination of dialysis with the

central venous line.

(a) Arterial pressure monitoring.

(b) Documentation.

(c) Verification with registered nurse correct placement of new central venous catheter line.

(8) Maintaining central venous line catheter patency including injection of anticoagulants into catheter ports.

(9) Identification of complications including but not limited to:

(a) emergency life threatening care;

(b) access recirculation;

(c) indefinite flow;

(d) clotting;

(e) catheter dislodgement.

G. Advanced hemodialysis technician procedures/skills check list for certification in New Mexico.

(1) Identify difference between permanent and temporary central venous catheters.

(2) Demonstrate ability to maintain a clean/sterile field of care.

(3) Demonstrate correct infection control practices throughout all procedures including the selection of correct antiseptic solutions.

(4) Demonstrate aspiration of anticoagulants with the correctly sized syringes.

(5) Demonstrate ability to maintain positive pressure in the catheter lumen.

(6) Identify and respond appropriately to complications with the central venous catheter.

(7) Determine correct lumen volume and instill anticoagulants aseptically post treatment.

(8) Correctly demonstrate that catheter lines are capped, changed, and secured before discontinuing patient from hemodialysis therapy.

[16.12.4.16 NMAC - N, 02-17-06]

HISTORY OF 16.12.4 NMAC:

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

BON Manual #90-1, New Mexico Board of Nursing Rules and Regulations for Hemodialysis Technicians, filed 01-29-90; BON Manual 93-2, New Mexico Board of Nursing Rules and Regulations for Hemodialysis Technicians, filed 08-25-93.

History of Repealed Material:

16.12.4 NMAC Certification of Hemodialysis Technicians and Training Programs repealed, 02-17-06.

Other History:

BON Manual 93-2, New Mexico Board of Nursing Rules and Regulations for Hemodialysis Technicians (filed 08-25-93)

was renumbered, reformatted to 16 NMAC 12.4, Certification of Hemodialysis Technicians and Training Programs, effective 01-01-1998.

16 NMAC 12.4 amended Certification of Hemodialysis Technicians and Training Programs (filed 12-10-97), renumbered, reformatted, amended and replaced by 16.12.4 NMAC Certification of Hemodialysis Technicians and Training Programs, effective 07-30-01.

16.12.4 NMAC Certification of Hemodialysis Technicians and Training Programs (filed 06-12-01) replaced by 16.12.4 NMAC Certification of Hemodialysis Technicians and Training Programs, effective, 02-17-06.

NEW MEXICO BOARD OF NURSING

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS PART 9 MANAGEMENT OF CHRONIC PAIN WITH CONTROLLED SUBSTANCES

16.12.9.1 ISSUING AGENCY:
New Mexico Board of Nursing.
[16.12.9.1 NMAC - N, 02-17-06]

16.12.9.2 SCOPE: This rule applies to all certified nurse practitioners, clinical nurse specialist with prescriptive authority.
[16.12.9.2 NMAC - N, 02-17-06]

16.12.9.3 STATUTORY AUTHORITY: Section 61-3-1 *et seq.*, authorized the board of nursing to regulate the practice of nursing in the state.
[16.12.9.3 NMAC - N, 02-17-06]

16.12.9.4 DURATION:
Permanent
[16.12.9.4 NMAC - N, 02-17-06]

16.12.9.5 EFFECTIVE DATE:
February 17, 2006, unless a later date is cited at the end of a section.
[16.12.9.5 NMAC - N, 02-17-06]

16.12.9.6 OBJECTIVE: It is the position of the board that certified nurse practitioners and clinical nurse specialist with prescriptive authority have an obligation to treat chronic pain and that a wide variety of medicines including controlled substances and other drugs may be prescribed for that length of time after a thorough medical evaluation has been completed.
[16.12.9.6 NMAC - N, 02-17-06]

16.12.9.7 DEFINITIONS:

A. "Addiction", is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

B. "Chronic pain", means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

C. "Drug abuser", means a person who takes a drug or drugs for other than legitimate medical purposes.

D. "Pain", means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation and damage.

E. "Physical dependence", means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

F. "Tolerance", means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.
[16.12.9.7 NMAC - N, 02-17-06]

16.12.9.8 GUIDELINES: The following guidelines will be used by the board to determine whether a certified nurse practitioner or clinical nurse specialist's prescriptive practices are consistent with the appropriate treatment of pain.

A. The treatment of pain with various medicines and/or controlled substances is a legitimate medical practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence and/or tolerance who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

B. The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following:

(1) A practitioner shall complete a physical examination and include an evalu-

ation of the patient's psychological and pain status. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substances abuse, coexisting disease or medical conditions, and the presence of a medical indication or contra-indication against the use of controlled substances.

(2) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan should include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(3) The practitioner shall discuss the risks and benefits of using controlled substances with the patient and/or surrogate or guardian.

(4) Complete and accurate records of care provided and drugs prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized should be recorded. Patients with a history of substance abuse or who are in an environment posing a high risk for misuse or diversion of drugs (e.g., living with a drug abuser, living or working in a place where drugs are available) may require special consideration.

(5) The management of patients needing chronic pain control requires monitoring by the attending and/or the consulting practitioner. In addition, a practitioner should consult, when indicated by the patient's condition, with health care professionals who are experienced (by the length and type of their practice) in the area of chronic pain control; such professionals need not be those who specialize in pain control. Consultation should occur early in the course of long-term treatment, and at reasonable intervals during continued long-term treatment for assessment of benefit and need. It is especially important, when treating addicts for legitimate pain apart from their addiction, to obtain a contractual agreement with the patient, appropriate consultation, and to set a schedule for re-evaluation of appropriate time intervals.

(6) If, in a practitioner's medical opinion, a patient is seeking pain medication for reasons that are not medically justified, the practitioner is not required to prescribe controlled substances for the patient.

C. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate medical indication for the treatment prescribed; documented change or

persistence of the recognized medical indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the practitioner's treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient's pain for its duration while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors.

D. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection as a guiding principle.

E. A practitioner who appropriately prescribe controlled substances and who follow this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the nursing practice act, board rules and pain relief act (24-2 D, 1 to 24-2 D, 6 NMSA 1978).

[16.12.9.8 NMAC - N, 02-17-06]

16.12.9.9 ADVANCED PRACTICE NURSES, REGISTERED NURSES, AND LICENSED PRACTICAL NURSES TREATED WITH OPIATES: Advanced practice nurses, registered nurses, licensed practical nurses who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by a physician, CNP, CNS pain specialist and must have a complete, independent neuropsychological evaluation, as well as clearance from their practitioner, before returning to or continuing in practice. In addition, they must remain under the care of a physician, CNP or CNS for as long as they remain on opiates while continuing in practice.

[16.12.9.9 NMAC - N, 02-17-06]

HISTORY OF 16.12.9 NMAC:
[RESERVED]

NEW MEXICO BOARD OF NURSING

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS
PART 10 MANAGEMENT OF MEDICAL RECORDS**

16.12.10.1 ISSUING AGENCY:
New Mexico Board of Nursing.

[16.12.10.1 NMAC - N, 02-17-06]

16.12.10.2 SCOPE: This rule gov-

erns the use management of medical records that are created and maintained as part of the practice of a certified nurse practitioner and clinical nurse specialist.

[16.12.10.2 NMAC - N, 02-17-06]

16.12.10.3 STATUTORY AUTHORITY:

Section 61-3-1 *et seq.*, authorized the board of nursing to regulate the practice of nursing in the state.

[16.12.10.3 NMAC - N, 02-17-06]

16.12.10.4 DURATION:
Permanent

[16.12.10.4 NMAC - N, 02-17-06]

16.12.10.5 EFFECTIVE DATE:

February 17, 2006, unless a later date is cited at the end of a section.

[16.12.10.5 NMAC - N, 02-17-06]

16.12.10.6 OBJECTIVE:

To ensure that certified nurse practitioners/clinical nurse specialist provide copies of medical records to patients; notify their patients of closing, selling, relocating or leaving a practice and have a system in place for retention, maintenance and destruction of medical records.

[16.12.10.6 NMAC - N, 02-17-06]

16.12.10.7 DEFINITIONS:

[Reserved]

[16.12.10.7 NMAC - N, 02-17-06]

16.12.10.8 RELEASE OF MEDICAL RECORDS:

Certified nurse practitioners/clinical nurse specialists must provide complete copies of medical records to a patient or to another practitioner in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient.

A. Medical records may not be withheld because an account is overdue or a bill is owed.

B. A reasonable charge may be made for the cost of duplicating and mailing medical records. A reasonable charge is \$1.00 per page for the first 25 pages, and \$0.10 per page thereafter. Patients may be charged the cost of reproduction for records formats other than paper, such as x-rays. Practitioners charging for the cost of reproduction of medical records should give consideration to the ethical and professional duties owed to other practitioners and their patients.

[16.12.10.8 NMAC - N, 02-17-06]

16.12.10.9 CLOSING, SELLING, RELOCATING OR LEAVING A PRACTICE:

Due care should be taken when closing or departing from a practice to ensure a smooth transition from the current practitioner to the new treating practitioner. This should occur with a minimum of disruption

in the continuity and quality of medical care being provided to the patient.

A. Active patients and patients seen within the previous three years should be notified 90 days before closing, selling, relocating or leaving a practice.

B. Patients should be notified within 90 days after the death of their practitioner.

C. Notification should be through an individual letter at the patient's last known address, and a notice in newspaper in local practice area (may be several times over a period of time). Notification should also be sent to the Board.

D. Notification should include:

(1) responsible entity/agent name of contact to obtain records or request transfer of records,

Telephone number and mailing address;

(2) how the records can be obtained or transferred;

(3) how long the records will be maintained before they are destroyed;

(4) cost of recovering records/transferring records; and

(5) whenever possible notification is the responsibility of the transferring or retiring practitioner.

E. A practitioner should not withhold patient lists or other information from a departing practitioner that is necessary for notification of patients.

F. Patients of a practitioner who leaves a group practice should be notified the practitioner is leaving, notified of the practitioner new address and offered the opportunity to have their medical records transferred to the departing practitioner at his/her new practice.

G. When a practice is sold, all active patients should be notified that the practitioner is transferring the practice to another practitioner of entity who will retain custody of their records and that at their written request the records (or copies) will be sent to another practitioner or entity of their choice.

H. Failure to notify patients of closing, selling, relocating or leaving a practice may be a violation of the nursing practice act and disciplinary action can occur (16.12.10.9 NMAC).

[16.12.10.9 NMAC - N, 02-17-06]

16.12.10.10 RETENTION, MAINTENANCE AND DESTRUCTION OF MEDICAL RECORDS

A. Improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records constitutes a violation of 61.3.28 A (6).

B. Destruction of medical records must be such that confidentiality is maintained. Records should be shredded or

incinerated (where permitted).

C. A log should be kept of all charts destroyed, including the patient's name and date of record destruction.

[16.12.10.10 NMAC - N, 02-17-06]

HISTORY OF 16.12.10 NMAC: [RESERVED]

NEW MEXICO BOARD OF NURSING

This is an amendment to 16.12.1 NMAC, Sections 7, 8, and 9, effective 2-17-06.

16.12.1.7 DEFINITIONS:

A. "Abandonment": occurs when the nurse has accepted the assignment to provide care, service or treatment to the consumer thus establishing relationship and then abruptly severed the relationship/disengaged from the relationship without giving reasonable notice to a qualified person who can make arrangements for the continuation of care by others; Consists of one or more of the following elements, which, as result of departure from assigned care, caused or may have caused harm: failure to provide observation to include but not limited to assessment and intervention; failure to assure competent intervention at any time to include but not limited to delayed treatment, insufficient treatment, or refusal to treat; failure to provide for provision of qualified coverage including but not limited to adequate time to arrange nursing coverage of assigned care. This is to be distinguished from employment abandonment, such as, but not limited to, contract issues, no call, no show; refusal to work mandatory overtime; refusal to float to unfamiliar areas, or resignation from a position; the board has no jurisdiction over employment issues.

[A]B. "Board": the New Mexico board of nursing.

[B]C. "Certificate": a legal document granting permission to an unlicensed person to perform specific functions generally considered the practice of nursing.

D. "Consumer": means any person domiciled, residing or receiving care, service or treatment from a licensed nurse or certified unlicensed assistive person. This includes but is not limited to patients, residents, or clients.

[E]E. "Complaint": means to declare in writing an allegation of a violation of the Nursing Practice Act and/or rules.

[D]E. "License": legal document granting an individual the privilege and authority to engage in practice of an occupation/profession.

[E]G. "Notice of contemplated action": a written notice indicating the board's intent to take disciplinary action against the license/certificate of an individual within its jurisdiction.

[F]H. "Notice of hearing": a written notice indicating the date, time and place for an appearance before the board.

[G]I. "Nursing Practice Act": NM statute which governs the regulations and licensing of nurses or certification of hemodialysis technicians/medication aides and training programs thereof.

[H]J. "Probation": subjecting a licensee/certificate holder to specific conditions for a stated period of time to determine fitness.

K. "Reasonable notice": the process of notifying a supervisor or manager of leaving the work site. The process allows for the supervisor or manager to locate a replacement therefore not jeopardizing the consumer's nursing care.

[I]L. "Reinstatement": the process whereby a license/certificate, which has been subject to disciplinary action by the board, is returned to its former status.

[J]M. "Reprimand": a written censure.

[K]N. "Revocation": to prohibit the conduct authorized by a license or certificate.

[L]O. "Stipulation and agreement": an agreement made by the attorneys on opposite sides of a cause or the prosecuting attorney and licensee, concerning disposition of relevant issues to eliminate the need for a formal hearing.

[M]P. "Suspension": to prohibit, for a stated period of time, the conduct authorized by a license or certificate.

[N]Q. "Uniform Licensing Act": NM statute which provides procedures to be utilized in disciplinary proceedings.

[1-1-98; 16.12.1.7 NMAC - Rn, 16 NMAC 12.1.7, 7-30-01; A, 11-16-01; A, 2-17-06]

16.12.1.8 ADMINISTRATION:

A. Members of the board are appointed by the governor and are accountable to the governor for the enforcement of the Nursing Practice Act, Section 61-3-1 *et seq.*, NMSA, 1978.

(1) Rules are adopted by the board to further define the Nursing Practice Act and the functions of the board.

(2) A code of conduct shall be adopted by the board, and shall be reviewed annually at a regularly scheduled meeting of the board.

(3) The board shall meet at least once every three months.

(a) A meeting notice resolution, consistent with the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA, 1978, shall be adopted by the board and shall be

reviewed annually at a regularly scheduled board meeting.

(b) A schedule of regular meeting dates shall be approved by the board at a regular meeting prior to the beginning of the next calendar year, and shall be published in the board's fall/winter newsletter, and on the board's website.

(4) The board may appoint advisory committees consisting of at least one member who is a board member and at least two members expert in the pertinent field of health care to assist it in the performance of its duties, Section 61-3-10, M. NMSA, 1978.

(a) Exception: no current board members shall be appointed to an advisory committee for the diversion program, Section 61-3-29, B. NMSA, 1978.

(b) Members of advisory committees who fail to attend three consecutive committee meetings shall automatically be removed as a member of the committee.

(c) Advisory committee members may be reimbursed as provided in the Per Diem and Mileage Act, Section 10-8-8 NMSA, 1978 for travel to a committee meeting and/or function.

(i) Mileage may be paid when there is a total of sixty (60) miles or more traveled,

(ii) Per diem may be paid for overnight stays only upon prior approval of the executive director or assistant director.

(5) The board shall elect a chairman, vice-chairman and secretary annually. The term of office begins with the meeting subsequent to the election. Any member of the board may serve as an officer of the board.

(6) Board members shall not be involved with the administration and/or management of the board office.

(7) Board may appoint site visitors who have expertise in the pertinent field of education/health care to accompany board staff on visits to educational programs, health care institutions/facilities, etc. to assist it in the performance of its duties and responsibilities. Site visitors may be reimbursed as provided in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8 NMSA, 1978, for travel to a committee meeting and/or function.

(a) Mileage may be paid when there is a total of sixty (60) miles or more traveled, and

(b) Per diem may be paid for overnight stays only upon prior approval of the executive director or assistant director.

B. The board shall hire an executive director who is accountable to the board for the administration and management of the board office, including but not limited to the fiscal operation, records, hir-

ing and firing of personnel. The operation of the board office shall be in accordance with the state of New Mexico statutes and rules.

(1) The executive director shall not have the power to grant, deny or withdraw approval for schools of nursing or to revoke, suspend or withhold any license authorized by the NPA.

(2) The executive director, or designee, shall represent the board to the public.

C. Honorarium: members of the board and board staff, when speaking on behalf of the board of nursing, may accept an honorarium. The honorarium shall be made in the name of the New Mexico board of nursing and deposited in the nursing fund with the state of New Mexico.

D. Verification of license/certificate.

(1) Employers and other interested persons may request verification of the status of a license/certificate.

(2) Verification of relicensure/recertification status is available immediately by phone and 24 hours on board website.

(3) Requests for verification of licensure/certification to other boards of nursing should be submitted through the NCSBN web based system.

E. Reimbursement for disciplinary witnesses and experts on behalf of the state.

(1) Individuals subpoenaed as a disciplinary witness for the state may be reimbursed for mileage as provided for in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8 NMSA, 1978, when sixty (60) miles or more are traveled to a disciplinary hearing.

(2) Individuals who serve as an expert witness for the state in a disciplinary matter may be reimbursed by the board in an amount not to exceed: two hundred dollars (\$200.00) for reviewing the file, research and advisement in the matter, and three hundred dollars (\$300.00) for testifying at a disciplinary hearing.

(3) The executive director may approve additional reimbursement for the review of files and testimony of expert witnesses when such reimbursement is essential to the prosecution of the case.

F. Telephonic attendance at board meetings by board members.

(1) Pursuant to the provisions of the Open Meetings Act, Section 10-15-1 C NMSA, 1978, as amended, board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment.

(2) Board members participation in meeting telephonically shall constitute

presence in person at the meeting. Telephonic participation may only occur when it is difficult or impossible for the person to be physically present. That is, there are circumstances beyond the member's control which make attendance in person extremely burdensome.

(3) Each board member participating telephonically must be identified when speaking and all participants must be able to hear all other participants.

(4) Members of the public attending the meeting must be able to hear all members of the board and members of the public who speak during the meeting.

G. Use of fax: The board of nursing may accept and send facsimile of documents. ~~[with the exception]~~ Faxes of communications related to participants of the diversion program are accepted to the confidential fax number only.

[1-1-98; 16.12.1.8 NMAC – Rn & A, 16 NMAC 12.1.8, 7-30-01; A, 11-16-01; A, 1-2-04; A, 6-01-04; A, 2-17-06]

16.12.1.9 DISCIPLINARY ACTION:

A. Authority of board of nursing: The board may deny, revoke, or suspend any license or certificate held or applied for under the NPA, or reprimand or place a license or certificate on probation on the grounds stated in Section 61-3-28 NMSA, 1978.

B. Disciplinary philosophy: the board of nursing accepts its mandate to regulate nursing, medication aides and hemodialysis technicians for the protection of the citizens of New Mexico. In its role as a regulatory body, the board recognizes that it is responsible for conducting hearings upon charges related to violations of the Nursing Practice Act, Section 61-3-1 through 61-3-30 NMSA, 1978 and/or its rules, and to take disciplinary actions against licensees or certificate holders who violate the statute or rules. The board considers all alleged violations based on the merits of each case and the potential danger to the public. The board will consider remedial measures of corrective action rather than denial, suspension or revocation of a license or certificate except in cases where there is a real or potential danger to the public. The board will deny, suspend or revoke a license or certificate when it has evidence that the public's health, safety and welfare may be in danger. The board is responsible for promoting, preserving and protecting the public health, safety and welfare through the adoption of rules that allow licensees and certificate holders to function safely and competently within the parameters of their license/certificate. The board is also responsible for ensuring that licensees and certificate holders have access to the

laws and rules governing nursing in order that they may function within the legal boundaries of the nursing practice act and its rules.

C. Grounds for action.

(1) For purposes of Section 61-3-28 (A) (3) NMSA 1978, supra, "incompetence" is defined as follows: In performing nursing functions, whether direct patient care or the administration/management of that care, a nurse is under a legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other nurses of the same licensure status and required by the generally accepted standards, of the profession including those standards set forth in 16.12.2.12 NMAC of these rules. The failure to possess or to apply to a substantial degree such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings. Charges of incompetence may be based on a single act of incompetence or on a course of conduct or series of acts or omissions, which extend over a period of time and which, taken as a whole, demonstrates incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient/client or to the public from the act or omission or series of acts or omissions.

(2) For the purpose of Section 61-3-28 (A) (6) NMSA, 1978, supra, "unprofessional conduct" includes, but is not limited to, the following:

(a) dissemination of a patient/client's health information and/or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law and/or hospital/agency policy from disclosure;

(b) falsifying or altering patient/client records or personnel records for the purpose of reflecting incorrect or incomplete information;

(c) misappropriation of money, drugs or property;

(d) obtaining or attempting to obtain any fee for patient/client services for one's self or for another through fraud, misrepresentation, or deceit;

(e) aiding, abetting, assisting or hiring an individual to violate the nursing practice act or duly promulgated rules of the board of nursing;

(f) obtaining, and/or attempting to obtain possessing, administering or furnishing prescription drugs to any person, including but not limited to one's self, except as directed by a person authorized by law to prescribe;

(g) failure to follow established procedure and documentation regarding

controlled substances;

(h) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of nursing;

(i) obtaining or attempting to obtain a license to practice nursing for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or relicensure process;

(j) practicing nursing in New Mexico without a valid, current New Mexico license or permit, or aiding, abetting or assisting another to practice nursing without a valid, current New Mexico license;

(k) failure to report a nurse(s) who is suspected of violating the New Mexico Nursing Practice Act and/or rules;

(l) intentionally engaging in sexual contact with and/or toward a patient/client in a manner that is commonly recognized as outside the scope of the individual nurse's practice;

(m) ~~[patient] abandonment [occurs when the nurse has accepted the patient assignment thus establishing a nurse-patient relationship and then severed the relationship/disengaged from the relationship without giving reasonable notice to a qualified person who can make arrangements for the continuation of nursing care by others; this is to be distinguished from employment abandonment, such as, but not limited to, contract issues, no call, no show, refusal to work mandatory overtime; refusal to float to unfamiliar areas, or resignation from a position; the board has no jurisdiction over employment issues];~~

(n) engaging in the practice of nursing when judgment or physical ability is impaired by alcohol or drugs or controlled substances;

(o) committing acts which constitute grounds for disciplinary action pursuant to Section 61-3-28 (A) (1), (2) NMSA, 1978—where the conviction arises from employment as a nurse, (3),(4)—where the intemperance, addiction, incompetence or unfitness has manifested itself during the course of employment as a nurse in a fashion which is contrary to the provision of good health care, (5)—where the mental incompetence has manifested itself during the course of employment as a nurse in a fashion which is contrary to the provisions of good health care, and (7);

(p) failure to follow state and federal laws, policies and procedures for the prescription and distribution of dangerous drugs including controlled substances;

(q) practice which is beyond the scope of licensure;

(r) delegation of medication administration, evaluation and nursing

judgment to non-licensed persons;

(s) verbally and/or physically abusing a patient/client;

(t) failure to maintain appropriate professional boundaries which may cause harm to the patient.

D. Grounds for disciplinary action against hemodialysis technicians and medication aides listed under 16.12.4.11 NMAC and 16.12.5.11 NMAC.

E. Parental Responsibility Act Compliance: This subsection is adopted pursuant to the Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA, 1978.

(1) All terms defined in the Parental Responsibility Act shall have the same meanings in this subsection.

(a) "HSD" means the New Mexico human services department.

(b) "Statement of compliance" means a certified statement from HSD stating that an applicant or licensee/certificate holder is in compliance with the judgment and order for support.

(c) "Statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee/certificate holder is not in compliance with a judgment and order for support.

(2) If an applicant or licensee/certificate holder is not in compliance with a judgment and order for support, the board:

(a) shall deny an application for a license/certificate;

(b) shall deny the renewal of a license/certificate; and

(c) has grounds for suspension or revocation of the license/certificate.

(3) Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support; the board shall match the applicant against the current certified list of board licensees/certificate holders and applicants.

(a) Upon the later receipt of an application for licensure, certification or renewal, the board shall match the applicant against the current certified list.

(b) By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees/certificate holders who are on the certified list and the action the board has taken in connection with such applicants and licensees/certificate holders.

(4) Upon determination that an applicant or licensee/certificate holder appears on the certified list, the board shall issue a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act, Section 61-1-1, *et seq.*, NMSA, 1978, to take the appropriate action.

(a) The NCA shall state that the board has grounds to take such action unless the licensee/certificate holder or applicant:

(i) mails a letter (certified mail return receipt requested) within twenty (20) days of receipt of the notice of contemplated action requesting a hearing; and

(ii) provides the board, prior to the scheduled hearing date, with a statement of compliance from HSD.

(b) If the applicant or licensee/certificate holder disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee/certificate holder should contact the HSD child support enforcement division.

(5) In any hearing under this subsection, relevant evidence is limited to the following:

(a) a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under Paragraph (2) of Subsection E of 16.12.1.9 NMAC, unless;

(b) the applicant or licensee/certificate holder provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under this subsection.

(6) When disciplinary action is taken under this subsection solely because the applicant or licensee/certificate holder is not compliance with a judgment and order for support, the order shall state that the applicant or licensee/certificate holder shall be reinstated upon presentation of a subsequent statement of compliance. Reinstatement following board action under this subsection shall require the licensee or certificate holder to meet the requirements for reinstatement and payment of the appropriate reinstatement fee.

F. Disciplinary proceedings: are conducted in accordance with the Uniform Licensing Act, Section 61-1-1 *et seq.*, NMSA, 1978 and Open Meetings Act, Section 10-15-1 *et seq.*, NMSA, 1978.

(1) Filing of a complaint.

(a) A written complaint must be filed with the board of nursing before a disciplinary proceeding can be initiated.

(i) A complaint is an allegation of a wrongful act(s) or an omission(s).

(ii) A complaint may include knowledge of a judgment or settlement against a licensee.

(b) A written complaint may be filed by any person, including a member of the board.

(c) A nurse who suspects that a nurse or certificate holder has violated any provision of the Nursing Practice Act and/or rules of the board must file a written complaint with the board of nursing; except when the nurse or certificate holder suspected of violating the Nursing Practice Act

and/or rules of the board is a patient and patient confidentiality is involved.

(2) Investigation of a complaint.

(a) Complaints alleging a violation of the Nursing Practice Act and/or rules adopted by the board may be investigated to determine whether a violation of applicable law or rule has occurred.

(b) The investigation may result in one following inter alia.

(i) A board motion to issue a notice of contemplated action (NCA) if a violation exists; or

(ii) A board motion to dismiss the complaint because no violations exists.

(3) Notice of contemplated action.

(a) The NCA shall be drafted by the administrative prosecuting attorney.

(b) The executive director of the board, or an assistant director in the director's absence, shall sign all NCAs on behalf of the board.

(c) NCAs are served on the licensee or certificate holder in accordance with the ULA.

(4) Request for a hearing, notice of hearing, and request for continuance.

(a) Notice of hearing, designating the date, time and place of the hearing, shall be mailed to the licensee or certificate holder via certified mail upon receipt of a written request for a hearing.

(b) The licensee or certificate holder may request to explore a settlement by negotiating a stipulation and agreement with the administrative prosecuting attorney at any time prior to the hearing.

(i) If a settlement is negotiated, the proposed stipulation and agreement shall be presented to the board for final approval.

(ii) The proposed stipulation and agreement does not divest the board of its authority to require a formal hearing or final approval, amendment, or rejection.

(iii) If a settlement is not reached, a hearing shall be held.

(c) Once a hearing has been scheduled, a request for a continuance must be presented, along with evidence to support the request to the board, in writing, at least ten (10) days prior to the scheduled hearing. The board may approve or deny the request.

(i) A motion to continue the hearing must contain an affirmative statement that the licensee or applicant waives his or her right to a hearing held not more than sixty (60) days from the date of service of the notice of hearing.

(ii) One continuance may be granted in each case if proof is submitted to verify good cause such as illness,

availability of new evidence or unavailability of the licensee or licensee's attorney. The board may approve or deny the request.

(d) If a person fails to appear before the board after requesting a hearing, the board may proceed to consider the matter as a default and make a decision.

(e) If no request for a hearing is made within the time and manner required by the ULA, the board may take the action contemplated in the NCA at its next regularly scheduled meeting. Such action shall be final and is not subject to judicial review.

(5) Administrative hearing.

(a) All hearings shall be conducted by the board or, at the direction of the board by a hearing officer. The hearing officer shall have authority to rule on all motions. If the board does not appoint a hearing officer or if the hearing officer is unavailable or unable to proceed, the board chair or other board member designated by the board shall have the authority to decide pre-hearing or preliminary matters on behalf of the board. This authority shall be in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case.

(b) All hearings before the board shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the board hearing.

(i) Hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs.

(ii) Disciplinary action against a nursing license or certificate holder must not be based solely on hearsay evidence.

(c) The board may take testimony, examine witnesses and direct a continuance of any case.

(d) The board may hold closed, or open, deliberations before or during a hearing for the settlement or simplification of issues with the consent of the person whose license or certificate is involved.

(e) The executive director, or in the director's absence, an assistant director or designee shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the board.

G. Decision of the board.

(1) The decision must be rendered by the board at a public meeting where a quorum of the members are present and participating in the decision.

(2) A copy of the written decision shall be mailed via certified mail to the applicant/licensee or certificate holder in accordance with the Uniform Licensing

Act, Section 61-1-14 NMSA, 1978.

H. Request/motion to reopen disciplinary proceedings: An applicant who has been denied a license or certificate in New Mexico or a licensee or certificate holder who has had disciplinary action taken by the board and who wishes to have the case reopened must submit a written request/motion to reopen their case prior to filing a petition for review with the district court.

(1) The board shall be polled to consider whether to grant or refuse the applicant/licensee or certificate holder request/motion to reopen the case, Uniform Licensing Act 61-1-21 and Open Meetings Act 10-15-1-E NMSA, 1978. (1990 supplement)

(2) The board's decision to grant or refuse the request/motion to reopen the case shall be made, signed by the executive director or an assistant director in the director's absence, and sent to the applicant/licensee or certificate holder within fifteen (15) days after receipt of the request/motion. The administrative prosecuting attorney shall be apprised of any decision of the board to reopen a case and shall be given an opportunity to respond to the motion.

(3) The formal hearing of the case shall be scheduled for the board's next regularly scheduled meeting. A notice of hearing shall be mailed, by certified mail, to the applicant/licensee or certificate holder within fifteen (15) days after service of the decision to grant the request/motion to reopen.

(4) The decision to grant or refuse the reopening of a case shall be in the discretion of the board, and the decision shall not be reviewable except for an abuse of discretion.

I. Public notification of disciplinary action: The disciplinary action of the board shall be made public in accordance with the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA, 1978 by the following means:

(1) Information regarding disciplinary action shall be coded in computer, license and/or certificate file.

(2) Submission of disciplinary action to the *national council of state board's disciplinary data bank/national practitioner data bank* (NPDB).

(3) Publication of the disciplinary action in the board's newsletter and on the board's website.

J. Reinstatement of license or certificate

(1) Individuals who request reinstatement of their license or certificate or who request that their probation be lifted must be prepared to provide the board with evidence to support their request. This evidence may be in the form of written reports or verbal testimony from individuals who

have knowledge of the licensee's or certificate holder's activities and progress during the period of probation, suspension or revocation.

(2) Requests for reinstatement of a revoked license or certificate shall not be considered by the board prior to the expiration of one year from the date of the order of revocation, unless provided for in the order of revocation. The date at which time the board chairman's signature is affixed to the order of revocation or suspension is the controlling date, unless otherwise specified in the order.

(3) Requests for reinstatement of a suspended license or certificate shall be considered at such time as provided by the board in the order of suspension.

(4) Reinstatement of a revoked or suspended license requires proof of meeting the renewal requirements as set forth in these rules adopted by the board, and payment of the reinstatement of current or lapsed license fee.

K. Complaints regarding firms, associations, institutions and corporations violating the Nursing Practice Act.

(1) The board of nursing shall accept and determine the disposition of written complaints regarding firms, associations, institutions and corporations violating the Nursing Practice Act, causing the violation of the Nursing Practice Act, or asking employees to violate the Nursing Practice Act by policy or directive.

(2) The agency shall be given the opportunity to respond in writing to the allegations in the complaint.

(3) If the board of nursing determines a violation of the Nursing Practice Act has occurred, the board of nursing shall identify and refer the complaint in writing to the appropriate authority for prosecution with a request to be kept apprised of the disposition of the case.

(4) If it is determined by the board of nursing that a violation of Section 61-3-30 A-H, NMSA, 1978 of the Nursing Practice Act has occurred, the board of nursing shall inform the agency to whom the complaint is referred of the requirements set out in Section 61-3-30 NMSA, 1978 of the Nursing Practice Act.

(5) The board shall keep a record of the number of complaints received and the disposition of said complaints.

[1-1-98, 2-26-99; 16.12.1.9 NMAC - Rn & A, 16 NMAC 12.1.9, 7-30-01; A, 11-16-01; A, 1-2-04; A, 2-17-06]

NEW MEXICO BOARD OF NURSING

This is an amendment to 16.12.2 NMAC, Sections 7, 9, 10, 12, 13, 14, 15, & 16 effective 02-17-06.

16.12.2.7

DEFINITIONS:

A. Definitions beginning with the letter A:

(1) **"actually engaged in nursing"**, employed, engaged, or holding a position which requires licensure or in which the maintenance of licensure as a nurse is expected;

(2) **"administration of medications"**, a process whereby a prescribed drug or biological agent is given to a patient/client by a person licensed or certified by the board to administer medications. ~~[the administration of medications is a procedure which requires a knowledge of anatomy, physiology, pathophysiology and pharmacology; when administering a medication, the licensed person is required to assess the patient/client's health status and disease process before and after the administration of the medication and to evaluate the patient/client's response to the drug or biological agent;]~~

(3) **"affidavit"**, a sworn written statement made to affirm a statement of fact;

(4) **"approval"**, the review and acceptance of a specific activity;

(5) **"approval agency"**, agency, institution or organization with the authorization to award CE credit;

(6) **"approved equivalent"**, a program reviewed and accepted by the board of nursing as meeting necessary regulatory/statutory requirements;

(7) **"assessment"**, the review and interpretation by a licensed individual of specific data necessary to determine the patient/client's care and treatment needs; (also see data collection);

(8) **"assignment of nursing activity"**, assignment of nursing activity involves appointing or designating another licensed nurse the responsibility and accountability for the performance of nursing intervention;

(9) **"assisting an individual to take a medication"**, implies that the individual is responsible for his own care or parent/legal guardian/surrogate can determine if the individual is receiving the expected response from the medication; the definition for administration of medications ~~[by licensed persons]~~ as defined above should not be confused with assisting an individual to take a medication;

(10) **"audit"**, an examination and verification of CE and practice documents.

B. Definitions beginning

with the letter B:

(1) **"basic nursing education"**, the scholastic route to initial licensure;

(2) **"board"**, the New Mexico board of nursing.

C. Definitions beginning with the letter C:

(1) **"certificate"**, a legal document granting permission to an unlicensed person to perform specific functions generally considered the practice of nursing under the direction of a licensed nurse;

(2) **"collaboration"**, practice in conjunction with another health professional;

(3) **"competency"**, competency in nursing is the ability to perform skillfully and proficiently the role of the licensee; the role encompasses essential knowledge, judgment, attitudes, values, skills and abilities, which are varied in range and complexity; competency is a dynamic concept and is based on educational training, preparation, and expertise;

(4) **"consultation"**, to communicate regularly to set goals and objectives and to review and document outcomes;

(5) **"contact hours"**, a unit of measurement to describe an approved, organized learning experience;

(6) **"continuing education"**, planned learning experiences beyond a basic nursing education program; these experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of nursing practice, thus improving health care to the public;

(7) **"continuing education unit (CEU)"**, ten contact hours of participation in an organized CE experience under responsible sponsorship, capable direction, and qualified instruction.

D. Definitions beginning with the letter D:

(1) **"data collection"**, the process of obtaining uninterrupted information, material, fact and/or clinical observations which will be used in the assessment process; data collection is not limited to licensed individuals;

(2) **"delegation [of nursing activity]"**, [delegation involves authorizing and supervising licensed and unlicensed persons in the performance of specific tasks that are within the scope of nursing practice;] the transferring to a competent individual the authority to perform a selected nursing task in a selected situation; the nurse retains accountability of the delegation;

(3) **"department of public safety"**, the New Mexico department of public safety or other state's department of public safety;

(4) **"direct supervision for grad-**

uate permit holders", at a minimum, the person responsible for the direct supervision must be in the facility or on the unit with the graduate permit holder observing, directing and evaluating the performance of the permit holder; the supervisor must not be engaged in other activities that would prevent them from providing direct supervision.

E. Definitions beginning with the letter E:

(1) **"educational institution"**, refers to an institution within the educational system which is organized and accredited for teaching and study (university, high school, post-secondary, approved area vocational institution);

(2) **"eligible for graduation"**, individual who has met all the requirements of an educational program.

(3) **"Final transcript"**, an official record of course work and grades, issued by a school, which indicates date of program completion and certificate or degree awarded.

(4) **"Generally recognized organization"**, an association of nurses with common goals and concerns expressed through structured by laws. Rules and regulations, and whose recognition derives from both the profession and the public.

H. Definitions H - Reserved**I. Definitions beginning with the letter I:**

(1) **"inactive list"**, compilation of those licenses that are in good standing but not current;

(2) **"initial license"**, the process of achieving the legal privilege to practice within a professional category upon the completion of all educational requirements and the successful writing of the national licensing examination;

(3) **"institution of higher education"**, college or university.

(4) **"Jurisdiction"**, the licensure or regulatory authoritative body for nursing within a specific geographic area for which there is endorsement in New Mexico.

K. Definitions K - Reserved**L. Definitions beginning with the letter L:**

(1) **"lapsed status"**, a license which was not renewed by the expiration date on the license;

(2) **"legal guardian"**, a person lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person who is considered incapable of administering his own affairs;

(3) **"letter of authorization"**, a document issued by the board which author-

izes an individual to practice nursing in New Mexico under the auspices of an approved preceptorship for an advanced nursing expanded scope of practice prescriptive authority or for an advanced practice nurse from a compact state;

(4) **"license"**, a legal document granting an individual the privilege and authority to engage in the practice of an occupation/profession;

(5) **"licensure by endorsement"**, the process of achieving the legal privilege to practice within a professional category, in New Mexico, by individuals licensed in other jurisdictions, upon fulfilling all requirements set by this state.

M. Definitions beginning with the letter M:

(1) **"medical emergency"**, a situation resulting from a disaster in which the number of persons requiring nursing care exceeds the availability of New Mexico registered nurses and/or licensed practical nurses;

(2) **"monitoring system"**, a mechanism whereby programs may be approved for CE hours within a geographic area;

(3) **"must"**, a requirement.

N. Definitions beginning with the letter N:

(1) **"national licensing examination"**, examination for licensure as provided by the national council of state boards of nursing, inc.;

(2) **"nationwide criminal history record"**, information concerning a person's arrests, indictments or other formal criminal charges and any dispositions arising there from, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the computerized databases of the federal bureau of investigation, the national law enforcement telecommunications systems, the department of public safety or the repositories of criminal history information of other states;

(3) **"nationwide criminal history screening"**, a criminal history background investigation of an applicant for licensure by examination or endorsement through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant.

O. Definitions O - Reserved**P. Definitions beginning with the letter P:**

(1) **"permit-to-practice for GCNSs"**, a document conferring the privilege to practice as a graduate clinical nurse specialist, at a specific place of employment, under the direct supervision of a

licensed CNS, CNP or physician; such permits will carry set expiration dates, are not renewable and are not transferable;

(2) **"permit-to-practice for GNs and GPNs"**, a document conferring the privilege to practice nursing at a specific place of employment, under direct supervision of a RN only; such permits will carry set expiration dates, are not renewable or transferable;

(3) **"permit-to-practice for GPNs"**, a document conferring the privilege to practice as a graduate nurse practitioner, at a specific place of employment, under the direct supervision of a physician or a certified nurse practitioner; direct supervision of a physician, licensed CNP or CNS is required for prescription writing; such permit will carry set expiration dates, are not renewable and are not transferable;

(4) **"permit-to-practice for GRNAs"**, a document conferring the privilege to administer anesthesia to any person, as a GRNA, at a specific place of employment, functioning in an interdependent role under the direction of and in collaboration with a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico; such permits will carry set expiration dates, and are not renewable or transferable;

(5) **"post-graduate program"**, any specialized knowledge and/or skills sought after completion of a basic nursing educational program which does not necessarily lead to an advanced degree;

(6) **"private practice"**, employment status of an individual nurse who is self-employed.

Q. Definitions Q - Reserved

R. Definitions beginning with the letter R:

(1) **"reactivation"**, the process of making current a license which has been in abeyance as a result of failure to comply with the necessary renewal requirements; this process does not involve board action at any juncture;

(2) **"recognized national or state institutions/organizations"**, institutions and organizations recognized as providers of CE for nurses;

(3) **"reinstatement"**, the process whereby a license which has been subject to revocation or suspension, is returned to its former status by individual board action; this process always involves board action, and requires filing of a form and payment of the reinstatement fee;

(4) **"relicensure"**, the process of renewal, reactivation or reinstatement of a New Mexico nursing license.

S. Definitions beginning with the letter S:

(1) **"state approved program"**, a basic nursing education program approved

or accredited by a state board of nursing and/or a nationally recognized nursing education accreditation body;

(2) **"shall"**, mandatory; a requirement;

(3) **"should"**, a suggestion or recommendation; not a requirement;

(4) **"sponsor/provider"**, any person, organization, agency, or institution which organizes, develops, implements, and evaluates a CE activity;

(5) **"supervision/direction"**, initial verification of a person's knowledge and skills in the performance of a specific function and/or activity followed by periodic observation, direction and evaluation of that person's knowledge and skills as related to the specific functions and/or activity;

(6) **"surrogate"**, an individual, other than a patient's agent or guardian, authorized under the uniform health-care decisions act to make a health-care decision for the patient.

T. **"Temporary license"**, a nonrenewable, nontransferable document indicating a legal privilege to practice as a RN, LPN, CNP, CNS or CRNA, on a conditional basis for a specific period of time.

U. **"Uniform Licensing Act"**, New Mexico statute which provides procedures to be utilized in disciplinary proceedings.

[1-1-98; 16.12.2.7 NMAC - Rn & A, 16 NMAC 12.2.7, 7-30-01; A, 12-31-01; A, 1-2-04; A, 02-17-06]

16.12.2.9 FEES: Payment of fees will be accepted in the form specified by the board. Fees are not refundable.

A.	Licensure	by	examination.....	\$110
B.	Reexamination		fee	
(RN).....				\$55
C.	Reexamination		fee	
(LPN).....				\$30
D.	Licensure	by	endorsement	
(RN/LPN).....				\$110

~~[E. Licensure by endorsement (LPN).....\$90]~~
~~[F]E.~~

Renewal.....\$93
~~[G]E.~~ Reactivation from lapsed status, inactive or returning to state (includes renewal fee)....\$110

~~G.~~ Reactivation from lapsed status (includes renewal fee).....\$200

H. Reinstatement of lapsed license following board action.....\$150

I. Reinstatement of current license following board action.....\$100

~~[J.]~~ Duplicate license (written request required).....\$20

~~K.~~ Initial nurse practitioner authorization.....\$50

~~L.~~ Initial certified RN anesthetist licensure.....\$50

~~M.~~ Initial clinical nurse specialist.....\$50

~~N.~~ Reactivation of specialty portion of license.....\$50]

~~J.~~ Initial advanced practice licensure (cnp, crna, cns).....\$100

~~K.~~ Advanced practice renewal.....\$75

~~L.~~ Reactivation from lapsed status advanced practice, inactive, returning to state.....\$110

~~M.~~ Reactivation from lapsed status advanced practice license.....\$200

~~[O.]N.~~ I n a c t i v e Status.....\$10

~~[P.]O.~~ T e m p o r a r y license.....\$30

~~[Q.]E.~~ Evaluation of non US Graduate Transcript.....\$50

[1-1-98; 16.12.2.9 NMAC - Rn & A, 16 NMAC 12.2.9, 7-30-01; A, 1-2-04; A, 02-17-06]

16.12.2.10 LICENSURE REQUIREMENTS FOR REGISTERED AND PRACTICAL NURSES: Licensure with the New Mexico board of nursing is mandatory and is the responsibility of the individual nurse, pursuant to the nursing practice act. For states who are a part of the nurse licensure compact, licensure in New Mexico can only be

issued to applicants who declare New Mexico as their primary state of residence.

A. Prerequisites for licensure of RNs and LPNs by examination in New Mexico.

(1) Completion of and eligible for graduation from a board approved course of study for the preparation of registered nurses or practical nurses, or an acceptable level of education as determined by the board or graduation from a program which is equivalent to an approved program of nursing in the United States.

(2) ~~(a)~~ RN and PN graduates from non-U.S. nursing programs:

~~(a)(i)~~ may have an evaluation of their nursing education credentials sent to the New Mexico board directly from a board recognized educational credentialing agency; or

~~(b)(i)~~ may request an official transcript sent to the New Mexico board directly from the non-US nursing program; if the transcript is not in English, a copy of a translated transcript certified by a qualified translator must be sent directly to the New Mexico board; Puerto Rico applicants who are graduates of NLNAC accredited registered nurse program are eligible to sit NCLEX-RN exam.

~~[(b) RN applicants educated in non U.S. nursing programs may submit a copy, certified by a notary, of the commission of graduates of foreign nursing school's (CGFNS) examination certificate in lieu of an evaluation of their educational credentials; Puerto Rico applicants who are graduates of NLNAC accredited registered nurse programs are eligible to sit the NCLEX-RN.]~~

~~(2)(3)~~ Completion of the required board of nursing application for licensure by examination according to instructions and including the required fee.

~~(3)(4)~~ Completion of NCLEX application for the testing service according to instructions.

B. Nationwide criminal background check. Applicants for initial licensure in New Mexico are subject to a state and national criminal background check at their cost.

(1) Submit two (2) full sets of fingerprints, completed **finger print certificate form**, signed authorization for criminal background check and fee.

(2) Applications for exam or endorsement will not be processed without submission of fingerprints, **finger print certificate form, authorization for criminal background check form** and fee.

(3) If the criminal background check reveals a felony or violation of the Nursing Practice Act, the applicant/licensee will be notified to submit copies of legal documents and other related information to

the board who will make the determination if the applicant is eligible for licensure or if disciplinary action will be taken.

C. Complete application for licensure by examination, certification of eligibility for graduation or official transcript, fingerprints and fee must be received by the board office prior to being granted permission to take the national licensing examination (NCLEX). Certification of eligibility for graduation or official transcript, indicating date requirements for graduation from the nursing program were met and certificate or degree awarded or to be awarded, must be received in the board office directly from the registrar's office.

D. Results of the examination shall be reported, by mail, to the individual applicant within four (4) weeks following the applicant's examination date. Examination results shall be released to the applicant's nursing program, and boards of nursing unless otherwise instructed, in writing, by applicant.

E. An initial license shall be valid for two (2) years.

F. Applications containing fraudulent or misrepresented information could be the basis for denial or revocation of licensure.

G. If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

H. Permits-to-practice may be issued for employment at a specific institution(s) in New Mexico. Permits can be faxed or mailed directly to the New Mexico employing institution(s).

(1) To be eligible for a permit-to-practice, the applicant must:

(a) complete the application process to take the NCLEX within twelve (12) weeks of graduation; the permit to practice for RN and PN graduates of U.S. schools may be issued for a period not to exceed six months from the date of application; permits to practice may not be issued by New Mexico for employment at specific institution(s) in compact states; permits to practice will not be issued for applicants who declare residency in other compact states;

(b) RN and PN graduates from non-U.S. nursing programs may be issued a permit to practice in New Mexico for a period not to exceed six months from the date of application;

(c) assure that prospective New Mexico employer(s) submit a letter of intent to employ to the board office, on agency letterhead, indicating the name of a specific New Mexico employer and name and nursing license number of the RN who is responsible for assuring direct supervision by a registered nurse;

(d) submit fingerprint cards and documents and fee to initiate a state and national criminal background check.

(2) Permits-to-practice cannot be transferred or renewed.

(3) Written notification from employer must be made to the board office in case of lost or stolen permit-to-practice.

(4) Permits-to-practice shall be valid until the examination results are disseminated but shall not exceed the expiration date on the permit.

(5) Candidates who were not successful on the *national licensure examination* will receive the results as soon as they are available.

(6) Applicants who hold a graduate permit and do not become licensed prior to expiration date of the permit, may not continue to practice as a graduate nurse or graduate practical nurse.

I. Direct supervision for graduate permit holders:

(1) at a minimum, the RN responsible for direct supervision must be in the facility or on the unit with the graduate;

(2) the RN is responsible for observing, directing and evaluating the performance of the graduate;

(3) the RN supervisor must not be engaged in other activities that would prevent them from providing direct supervision.

~~[(I)J.]~~ Applicants who fail the examination may apply to retake the examination a maximum of eight (8) times per year, but must wait forty-five (45) days to retest.

(1) A fee will be charged by the board for all reexaminations.

(2) Applicants for reexamination must meet all NCLEX requirements for retaking the examination.

~~[(J)K.]~~ National council licensing examination.

(1) Applicants for licensure as RNs shall be required to pass the NCLEX for RNs.

(2) Applicants for licensure as PNs shall be required to pass the NCLEX for PNs.

(3) Applicants observed giving and/or receiving unauthorized assistance during the taking of the national licensing examination shall be referred to the board by a sworn complaint.

~~[(K)L.]~~ Prerequisites for licensure of registered nurses and licensed practical nurses by endorsement.

(1) Verification DIRECTLY from the licensing authority which shall include:

(a) graduation from an approved nursing program or an acceptable level of education as determined by the board or a nursing program which is equivalent to an approved program of nursing in the United

States; and

(b) initial licensure by passing a national licensure examination in English or a state constructed licensure examination prior to October 1986.

(2) Applicants from licensing authorities which do not verify graduation from a nursing education program, must assure that a final transcript is sent to the board of nursing DIRECTLY from the educational institution or custodian of records verifying graduation from an approved nursing program or equivalent, or

(3) RN and PN graduates from non-U.S. nursing programs:

(a) may have an evaluation of their nursing education credentials sent to the New Mexico board directly from a board recognized educational credentialing agency or;

(b) may request an official transcript sent to the New Mexico board directly from the non- US nursing program; if the transcript is not in English, a copy of a translated transcript certified by a qualified translator must be sent directly to the New Mexico board; Puerto Rico applicants who are graduates of NLNAC accredited registered nurse programs are eligible to sit the NCLEX-RN exam; Canadian applicants who have been endorsed by another state after passing the Canadian nursing exam in English or the NCLEX are eligible for endorsement into NM.

~~[(4) RN applicants educated in non-U.S. nursing programs may submit a copy, certified by a notary, of the commission of graduates of foreign nursing schools (CGFNS) examination certificate in lieu of an evaluation of their educational credentials. Puerto Rico applicants who are graduates of NLNAC accredited registered nurse programs are eligible to sit the NCLEX-RN.]~~

~~[(5)](4)~~ Complete and submit the required application for licensure by endorsement in accordance with all instructions, including the required fee.

~~[(6)](5)~~ Complete and submit two full sets of fingerprints, **finger print certificate form**, the authorization for criminal background check, and the fee in accordance with all instructions found in Subsection B of 16.12.1.10 NMAC.

~~[L.]M.~~ Qualifications for licensure as a RN or PN are pursuant to the nursing practice act.

(1) LPN applicants initially licensed after July 1, 1969 must meet the educational requirements.

(2) Military personnel, licensed as LPNs by successful writing of the national licensing examination prior to July 1, 1977, may be licensed in New Mexico by endorsement providing their DD-214 shows the related civilian occupation to be "LPN."

(3) Continuing education is not

required for initial licensure by endorsement. CE requirements must be met at the time of the first renewal.

(4) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

~~[M.]N.~~ A permit-to-practice may be issued to a New Mexico employer(s), for an endorsee who has not declared primary residence in a nurse licensure compact state awaiting results of the national licensing examination or the English equivalent from another country. The following must be submitted to the board:

(1) a completed endorsement application for licensure in accordance with all instructions and fee;

(2) two full sets of fingerprints, fingerprint certification form, the authorization for criminal background check and fee in accordance with all instructions found in Subsection B of 16.12.1.10 NMAC;

(3) written verification must be received DIRECTLY from the licensing authority: (a) that the applicant applied for the licensing examination within twelve (12) weeks of graduation and is eligible for licensure, or (b) that the first licensing examination after completion of nursing education has been applied for or taken;

(4) assure prospective New Mexico employer(s) submits a letter of intent to employ, on agency letterhead, indicating the name of the specific New Mexico employing institution and name and nursing license number of the RN who is responsible for assuring direct supervision by a registered nurse;

(5) meeting all other endorsement requirements;

(6) a permit-to-practice shall be valid from date of issuance until the applicant's examination results and licensure status have been verified by the other state or country, but shall not exceed ~~[twenty-four (24) weeks]~~ six (6) months from the date of graduation.

~~[N.]O.~~ A temporary license may be issued to an endorsee upon submission of:

(1) a completed endorsement application and required fee in accordance with all instructions;

(2) two full sets of fingerprints, fingerprint certificate form, the authorization for criminal background check and fee in accordance with all instructions found in Subsection B of 16.12.1.10 NMAC;

(3) the board will issue the temporary license to the applicant;

(4) a temporary license is valid for a period not to exceed six (6) months from the date of application, is non renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action;

(5) applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license;

(6) the discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

~~[O.]P.~~ An initial license shall be valid for two (2) years.

~~[P.]Q.~~ If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

~~[Q.]R.~~ In case of a medical emergency (as defined in these rules), nurses currently licensed to practice as a RN or LPN in a jurisdiction of the United States may practice in New Mexico without making application for a New Mexico license for a period not to exceed thirty (30) days.

~~[R.]S.~~ Requirements for relicensure. Applicants for relicensure must meet CE requirements as stated in these rules, pursuant to the nursing practice act [Section 61-3-24 NMSA 1978].

(1) Licensed nurses shall be required to complete the renewal process by the end of their renewal month every two (2) years.

(2) A renewal ~~[application form]~~ notice shall be mailed to the licensee at least six (6) weeks prior to the end of the renewal month.

(a) ~~[The renewal application form]~~ Renewal of license may be accepted no more than sixty (60) days prior to the expiration date of the license.

(b) Failure to receive ~~[the application for]~~ notice renewal shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

(c) If the license is not renewed by the end of the renewal month, licensee does not hold a valid license and shall not practice nursing in New Mexico until the lapsed licensed has been reactivated.

~~(d)~~ A reactivation fee will be charged when license has lapsed.

~~[(d)](e)~~ Exception: if renewing, nurses who are mobilized for active duty are not required to renew their license while on active duty, other than training, during a military action. A copy of the mobilization orders must be submitted to the board office prior to expiration of the license. The license extension shall end one month after deployment is concluded. No reactivation fee will be charged when the license is renewed.

(3) Thirty (30) hours of approved CE must be accrued within the 24 months immediately preceding expiration of license.

(a) Certified nurse practitioners

must complete a total of 50 hours of approved CE each renewal.

(b) Certified RN anesthetists must submit a copy of the recertification card issued by AANA council on recertification for renewal of the CRNA license.

(c) Clinical nurse specialist must complete a total of 50 hours of approved continuing education each renewal.

(d) **Exception:** if renewing, nurses mobilized for military action are not required to meet the CE requirements while on active duty, other than training, during a military action. A copy of the mobilization order must be submitted along with the renewal application.

(4) Individuals who reside out-of-state who do not hold primary residence in a nurse licensure compact state, but wish to maintain a current, valid New Mexico license, must meet the same requirements for licensure as licensees residing within the state who have declare New Mexico as their primary residence.

(5) **Penalty:** failure of licensee to meet the CE requirement for licensure shall result in the license not being renewed, reinstated, or reactivated. When the CE requirement has been met, an application for licensure may be submitted for consideration.

(6) ~~[Licenses are issued by mail only.]~~ Licenses can be verified by phone verification or on the board website.

~~[S-]I.~~ Requirements for ~~[reporting lost stolen licenses/]~~ name-address change: ~~[and requesting duplicate license.]~~

~~(1) Lost/stolen license: Licensee is required to give immediate notification to the board office of lost or stolen license.]~~

~~(2)(1)~~ **Address change:** Immediate notification of address change must be made, to the board office.

~~(3)(2)~~ **Name change:** Nurse must use name as it appears on current license, name may be changed when license is renewed.

~~(a) duplicate may be requested upon change of name, or;~~

~~(b) name may be changed when license is renewed.]~~

~~(4) Procedure for obtaining a duplicate license.]~~

~~(a) Submit a written request for a duplicate license including the following information: Licensee's name, date of birth, nursing license number, social security number and address.]~~

~~(b)(a)~~ Submit a copy of the legal document required for name change (ONLY recorded marriage certificate, divorce decree or court order accepted).

~~(c)(b)~~ Remit the required fee.

~~(d) Duplicate license may be reissued, within a given renewal period, ONLY upon return of the previously issued~~

~~duplicate.~~

~~(e) Duplicate licenses are issued by mail only.]~~

~~(F)U.~~ Reactivation/reinstatement of a lapsed license must meet the requirements for relicensure pursuant to the nursing practice act and these rules. A reactivated or reinstated license shall be valid for two (2) years.

~~(U)V.~~ Inactive status. Licensee may request her/his license be placed on inactive status during the renewal cycle only; however, the licensee may not function in a nursing capacity as a New Mexico licensed nurse until the license is reactivated.

(1) In order to place a license on inactive status, the licensee must, prior to the expiration date of the current license submit a completed renewal form and submit the inactive status fee.

(2) The license may remain in an inactive status indefinitely.

(3) The inactive fee is charged each time inactive status is requested following reactivation of the license.

[1-1-98; 16.12.2.10 NMAC - Rn & A, 16 NMAC 12.2.10, 7-30-01; A, 12-31-01; A, 04-01-02; A, 1-2-04; A, 6-01-04; A, 02-17-06]

16.12.2.12 STANDARDS OF NURSING PRACTICE

A. The nurse shall maintain individual competence in nursing practice, recognizing and accepting responsibility for individual actions and judgments.

(1) Competent nursing practice requires that the nurse have the knowledge and skills to practice nursing safely and properly in accordance with his/her licensure status and to perform specific functions and/or procedures required in his/her particular area of practice. Competent nursing practice also requires that the nurse have the knowledge to recognize and respond to any complication(s) which may result from the function and/or procedure the nurse performs.

(2) To maintain the requisite knowledge and skills, the nurse shall engage in CE specific to his/her particular area of practice.

(3) The nurse shall use individual competence as a criterion in accepting assigned responsibilities.

(4) The nurse contributes to the formulation, interpretation, implementation and evaluation of the objectives and policies to nursing practice within his/her employment setting.

B. The nurse shall assign/delegate to licensed and unlicensed persons only those nursing actions which that person is prepared, qualified or licensed or certified to perform.

(1) The nurse is accountable for assessing the situation and is responsible for the decision to delegate or make the assignment.

(2) The delegating nurse is accountable for each activity delegated, for supervising the delegated function and/or activity, and for assessing the outcome of the delegated function and/or activity.

(3) The nurse may not delegate ~~[nursing activities other than]~~ the specific functions of nursing ~~[medication administration,]~~ assessment, evaluation and nursing judgment to non-licensed persons. ~~[Except for the administration of medication as provided for in the board's rules for certified medication aides and certified hemodialysis technicians.]~~

C. The nurse shall have knowledge of the laws and rules governing nursing and function within the legal boundaries of nursing practice.

(1) The nurse must report incompetent and/or unprofessional conduct to the appropriate authorities.

(2) The nurse must report violations of the nursing practice act and/or administrative rules of the board of nursing to the board of nursing.

D. The nurse acts to safeguard the patient/client when his care and safety are affected by incompetent, unethical, or illegal conduct of any person by reporting the conduct to the appropriate authorities.

E. The nurse shall recognize the dignity and rights of others regardless of social or economic status and personal attributes, shall conduct practice with respect for human dignity, unrestricted by considerations of age, race, religion, sex, sexual preference, national origin, disability or nature of the patient/client's health problems.

F. The nurse safeguards the individual's right to privacy by judiciously protecting information of a confidential nature, sharing only that information relevant to his care.

G. The nurse shall identify herself/himself by name and licensure category and shall permit inspection of their license when requested.

H. Standards for professional registered nursing practice. Registered nurses practice in accordance with the definition of professional registered nursing in the NPA. [61-3-3, J. NMSA 1978].

(1) RNs may assume specific functions and/or perform specific procedures which are beyond basic nursing preparation for professional registered nursing [61-3-3, J. NMSA 1978] provided the knowledge and skills required to perform the function and/or procedure emanates

from a recognized body of knowledge and/or practice of nursing, and the function or procedure is not prohibited by any law or statute.

(2) When assuming specific functions and/or performing specific procedures, which are beyond the nurse's basic educational preparation, the RN is responsible for obtaining the appropriate knowledge, skills and supervision to assure he/she can perform the function/procedure safely and competently.

I. Standards for licensed practical nursing practice. Licensed practical nurses practice in accordance with the definition of licensed practical nursing in the NPA [61-3-3, G. NMSA 1978].

(1) LPNs may assume specific functions and/or perform specific procedures which are beyond basic preparation for licensed practical nursing [61-3-3, G. NMSA 1978] provided the knowledge and skills required to perform the function and/or procedure emanates from the recognized body of knowledge and/or practice of nursing, and the functions or procedure is not prohibited by any law or statute. LPNs who perform procedures which are beyond basic preparation for practical nursing must only perform these procedures under the supervision/direction of a RN.

(2) LPNs may perform intravenous therapy, including initiation of IV therapy, administration of intravenous fluids and medications, and may administer medications via the intraperitoneal route provided the LPN has the knowledge and skills to perform IV therapy safely and properly.

(3) When assuming specific functions and/or performing specific procedures which are beyond the LPN's basic educational preparation, the LPN is responsible for obtaining the appropriate knowledge, skills and supervision to assure he/she can perform the function/procedure safely and competently.

J. Educational program criteria. Educational programs preparing either RNs or LPNs to perform specific functions and/or procedures that are beyond basic educational preparations should:

(1) prepare the nurse to safely and properly perform the function and/or procedures;

(2) prepare the nurse to recognize and respond to any complication(s) which may result from the procedure, and;

(3) verify the nurse's knowledge and the ability to perform the specific functions and/or procedures.

K. Nursing practice advisory committee. Board of nursing may appoint a minimum of a 7-member advisory committee to assist the board in regulating the practice of nursing. The committee shall assist and advise the board in the

review of issues related to the practice of nursing.

[1-1-98; 16.12.2.12 NMAC - Rn & A, 16 NMAC 12.2.12, 7-30-01; A, 1-2-04; A, 02-17-06]

16.12.2.13 CERTIFIED NURSE PRACTITIONER (CNP)

A. Requirements for licensure of nurse practitioners.

(1) Hold a current, valid RN license.

(2) Successfully complete a formal program designed for the education and preparation of nurse practitioners as providers of primary, and/or acute, and/or chronic, and/or long-term, and/or end of life health care.

(a) The program must be offered through an accredited institution of higher education or through the armed services.

(b) The program must be one full academic year of full-time study with approximately 1/3 of the program devoted to didactic and 2/3 to a preceptorship with a physician and/or certified (licensed) nurse practitioner. Didactic hours must include twenty-four (24) contact hours of pharmacology. NOTE: One academic hour equals fifteen (15) contact hours.

(c) If the applicant is initially licensed by any board of nursing including the New Mexico board of nursing after January 1, 2001 the program must be at the master's level or higher. Applicants who do not hold a master's level or higher degree from a nurse practitioner program and were initially licensed by any board before January 1, 2001, must provide verification of NP licensure.

(3) Provide evidence of successful accomplishment of national certification as a nurse practitioner.

(4) It is the responsibility of the applicant to provide documented evidence of his/her qualifications for licensure.

(5) Applicants who meet the minimum didactic and pharmacology requirements, but lack the required preceptorship, may be considered for licensure in New Mexico if the applicant provides satisfactory evidence of two (2) years nurse practitioner experience in another jurisdiction.

(6) Nurse practitioners who will be requesting prescriptive authority must also comply with the requirements for prescriptive authority as outlined in these rules.

B. Procedure for licensure as a graduate nurse practitioner. The applicant seeking licensure as a nurse practitioner shall be responsible for providing proof of meeting the requirements for licensure.

(1) The applicant shall complete the New Mexico nurse practitioner licensure application and submit it along with all required documents in accordance with the instructions.

(2) Upon acceptance of the completed application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet the requirements for licensure may request or be requested to meet with the board or its designee.

(4) Nurse practitioners are not eligible to practice in New Mexico as a certified nurse practitioner until so licensed in accordance with the licensure procedures.

(5) The board may appoint nurse practitioners to the advanced practice committee. These nurse practitioners will provide advice regarding licensure and practice of nurse practitioners.

C. Graduate nurse practitioners permit-to-practice may be issued, upon written request, provided all requirements have been met except national nursing certification.

(1) GNPs must practice under the direct supervision of a physician or New Mexico CNP or CNS in the specialty.

(2) GNPs may prescribe medications only under the direct supervision of a licensed CNP, CNS or a physician, in compliance with these rules. GNPs must fulfill the requirements in this section to prescribe controlled substances.

(3) GNP permits will be issued to the employer.

(4) A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor and the name of the prescription supervisor, is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice at the new place of employment. The permit will be issued directly to the new employing agency.

(5) The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GNP permit.

(6) GNP permits cannot be transferred, renewed or a duplicate issued.

(7) GNP permits expire on the date specified on the permit.

(a) Permits shall be valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice as a GNP. It is the responsibility of the GNP to request that the national certifying organization notify the board of the results of the examination.

(b) The permits for new graduates may be valid for a period not to exceed two (2) years.

D. A license to practice as a CNP shall be issued only after receipt by the board of proof of national certification. Such proof must be submitted to the board

prior to the expiration of the permit.

E. Exclusion: Nurse practitioners with lapsed national certification are not eligible for a permit to practice.

F. Prerequisites for licensure of CNP by endorsement.

(1) Verification DIRECTLY from the licensing authority, which shall include graduation from a nurse practitioner program.

(2) In lieu of verification of advanced practice licensure for the licensing authority the board will accept:

(a) documentation directly from that licensing authority that the state does not issue advanced practice licensure;

(b) a sworn affidavit from applicant that they practice as an advance practice nurse with year practice began, and;

(c) if applicant was licensed by another board after January 1, 2001, submit a transcript from the program directly to the board documenting completion of a nurse practitioner program on the master's or higher level.

(3) Verification from applicant of national certification as a nurse practitioner.

(4) Nurse practitioners who are requesting prescriptive authority must comply with the requirements for prescriptive authority as outlined in these rules.

(5) Complete and submit the required application from licensure by endorsement in accordance with all instructions including the required fee.

G. Qualifications for licensure as CNP are pursuant to the nursing practice act.

(1) Refer to subsection A, 16.12.2.13 NMAC for licensure requirements.

(2) Continuing education is not required for initial CNP licensure by endorsement. CE requirements must be met at the time of the first renewal.

(3) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

H. A CNP permit-to-practice may be issued to a New Mexico employer(s) for an endorsee awaiting results on successful completion of national certification. Refer to Subsections B and C of 16.12.2.13 NMAC for procedure and requirements.

I. A temporary nurse practitioner license may be issued to an endorsee who:

(1) submits a completed endorsement application and fee in accordance with all instructions;

(2) submits a copy of current national certification as a nurse practitioner; the following exceptions can be made;

(a) nurse practitioners who were

licensed by any jurisdiction before December 2, 1985 are not required to hold national certification; or

(b) when the state of former advanced practice licensure does not require national certification; proof of national certification as a nurse practitioner must be submitted to the board before a license will be issued.

(3) the board will issue the temporary license to the applicant;

(4) a temporary license is valid for a period not to exceed six (6) months from the date of application, is non renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action;

(5) applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license;

(6) the discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

J. An initial nurse practitioner license shall be valid for two (2) years. A letter of authorization will be issued to NPs who have RN multi-state licensure privileges from other nurse licensure compact state.

K. If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

L. Authorization to expand scope of practice or who need recertification.

(1) A letter of authorization will be issued for the CNPs who through additional formal education have expanded their practice into another area of NP practice or who need practice hours to recertify provided all requirements have been met except national certification.

(2) A letter of verification of intent to provide a preceptorship, on official letterhead including the name of the practice preceptor and the name of the prescription preceptor must be submitted to the board of nursing.

(3) Practice must be under the direct supervision of a physician or licensed New Mexico CNP or CNS in the specialty.

(4) Prescribing may be done only under the direct supervision of a licensed CNP or CNS or a physician in compliance with these rules.

(5) A letter of authorization will be issued to the preceptor.

(6) A letter of authorization cannot be transferred, renewed or a duplicate issued.

(7) A letter of authorization will

expire on the date specified.

(a) A letter of authorization shall be valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice in that area. It is the responsibility of the CNP to request that the national certifying organization notify the board of the results of the examination. A letter of authorization may be valid for a period not to exceed two (2) years.

(b) A letter of authorization shall be valid for 6 months for those applicants recertifying.

(c) A letter of authorization shall be issued for the prescriptive authority preceptorship. This letter will only be valid for the duration of the preceptorship expansion of scope of practice or recertification required hours of practice.

M. Maintaining licensure as a nurse practitioner.

(1) National certification: NPs must maintain national certification. A copy of the specialty certification/recertification card shall be presented at the time of each subsequent renewal. Nurse practitioners licensed by the NM board, after December 2, 1985 are required to be nationally certified in their specialty.

(2) Continuing education.

(a) The CNP shall accrue a total of fifty (50) contact hours of approved CE each renewal period. National certification or recertification as a NP may not be used to fulfill any portion of the CE requirement:

(i) thirty (30) contact hours shall meet the requirements for licensure as a RN, and

(ii) an additional twenty (20) contact hours, 15 of which must be pharmacology, shall meet the requirements for licensure as a nurse practitioner;

(iii) CNP's from compact states are only required to fulfill CE requirements listed under item (ii) of this subparagraph.

(b) The CE shall be in accordance with the requirements as set forth in these rules.

N. Reactivation. To reactivate or reinstate licensure as a nurse practitioner, the nurse must provide evidence of meeting the CE requirements. NPs licensed by the board after December 2, 1985 must also provide evidences of current national certification.

O. Nurse practitioner practice.

(1) The CNP makes independent decisions regarding the health care needs of the client and also makes independent decisions in carrying out health care regimens.

(2) The CNP provides primary and/or acute, and/or chronic, and/or long-

term, and/or end of life health care to meet the health care needs of individuals, families and communities in any health care setting.

(3) The CNP may assume specific functions and/or perform specific procedures which are beyond the advanced educational preparation and certification for the CNP provided the knowledge and skills required to perform the function and/or procedure emanates from a recognized body of knowledge and/or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions and/or performing specific procedures, which are beyond the CNP's advanced educational preparation and certification, the CNP is responsible for obtaining the appropriate knowledge, skills and supervision to ensure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(4) The CNP collaborates as necessary with other healthcare providers. Collaboration includes discussion of diagnosis and cooperation in managing and delivering healthcare.

(5) CNPs who have fulfilled requirements for prescriptive authority may prescribe and distribute dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act within their clinical specialty and practice setting.

(a) Requirements for prescriptive authority: In accordance with applicable state and federal laws, the CNP who fulfills the following requirements may prescribe and distribute dangerous drugs including controlled substances included in Schedules II through V of the Controlled Substance Act.

(i) Verifies 400 hours of work experience in which prescribing dangerous drugs has occurred within the two (2) years immediately preceding the date of the application. Individuals who have not fulfilled this requirement must provide documentation of successful completion of 400 hours of prescribing dangerous drugs in a preceptorship with a licensed CNP, CNS or physician. The preceptorship must be completed within six (6) months and a letter of authorization will be issued for the duration of the preceptorship.

(ii) In order to prescribe controlled substances, the CNP must provide the board of nursing with verification of current state controlled substances registration and current DEA number, unless the CNP has met registration waiver criteria from the New Mexico board of pharmacy (Subsection I 16.19.20.8 NMAC). CNPs may not possess, prescribe or distribute controlled substances until they have both a

current state controlled substances registration and a current DEA registration.

(iii) Once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary. It is the CNP's responsibility to maintain a formulary of dangerous drugs and controlled substances that may be prescribed; the only drugs to be included in the formulary are those relevant to the CNP's specialty and practice setting. The board of nursing reserves the right to audit the formulary of the CNP. Licensees may be subject to disciplinary action by the board of nursing if non compliant with the audit.

~~(i) All CNPs must maintain a current formulary with the board of nursing.~~

~~(ii) The board of nursing reserves the right to audit the formulary of the CNP. Licensees may be subject to disciplinary action by the board of nursing if non compliant with the audit.~~

(c) Prescription pads. The CNP's name, address, and telephone number must be imprinted on the prescription pad. In the event that a CNP is using a prescription pad printed with the names of more than one CNP, the name of the CNP for the individual prescription shall be indicated.

(d) Distributing: CNPs, who have fulfilled requirements for prescriptive authority as stated in these rules, may distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act, which have been prepared, packaged, or fabricated by the registered pharmacist or doses which have been pre-packaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [61-11-22] and the Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Labeling: CNPs may label only those drugs which the CNP prescribes and distributes to patients under the CNP's care. The medication shall be properly labeled with the patient's name, date of issue, drug name and strength, instructions for use, drug expiration date, number dispensed and name, address and telephone number of the CNP. Labeling may be handwritten or a pre-printed fill-in label may be used. All information shall be properly documented in the patient record.

(f) CNPs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(6) Graduate nurse practitioner (GNP) practice.

(a) GNPs may not distribute med-

ications.

(b) GNPs may practice and/or prescribe medications only under the direct supervision of a licensed CNP, CNS or physician in the specialty.

(7) To insure competency and safe practice in specific regard to prescription writing practices in the state of NM:

(a) a list of current CNPs and their status with regard to prescription writing shall be distributed at least annually and upon request to the board of pharmacy;

(b) violation of these rules and/or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy;

(c) the board of nursing shall annually appoint qualified CNPs in each specialty to serve on the board of pharmacy disciplinary panel.

[1-1-98; 16.12.2.13 NMAC - Rn & A, 16 NMAC 12.2.13, 7-30-01; A, 12-31-01; A, 04-01-02; A, 1-2-04; A, 02-17-06]

16.12.2.14 CERTIFIED REGISTERED NURSE ANESTHETIST (CRNA)

A. Requirements for licensure as a CRNA.

(1) Hold a current, valid RN license.

(2) Successfully complete a formal program designed for the education and preparation of certified registered nurse anesthetist. The AANA *council on accreditation of nurse anesthetist educational programs/schools* must accredit the program.

(3) If the applicant is initially licensed by any board of nursing including the New Mexico board of nursing after January 1, 2001, the program must be at the master's level or higher. Applicants who do not hold a master's or higher degree from a nurse anesthetist program and were initially licensed by any board before January 2, 2001, must provide verification of CRNA licensure.

(4) Provide evidence of successful completion of a national qualifying examination as described by the AANA *council on certification of nurse anesthetists*.

(5) It is the responsibility of the applicant to provide documented evidence of his/her qualification for licensure.

(6) Applicants who will be requesting prescriptive authority must also comply with the requirements for prescriptive authority as outlined in these rules.

B. Procedure for licensure as a graduate. The applicant seeking licensure as a certified registered nurse anesthetist shall be responsible for providing proof of meeting the requirements for licensure.

(1) The applicant shall complete the New Mexico certified registered nurse

anesthetist licensure application and submit it along with all required documents, and fee in accordance with the instructions.

(2) Upon acceptance of the completed application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet the requirements for licensure may request or be requested to meet with the board or its designee.

(4) Certified registered nurse anesthetists are not eligible to practice in New Mexico as certified registered nurse anesthetist until so licensed in accordance with the licensure procedures.

(5) The board may appoint certified registered nurse anesthetists to the advanced practice committee. These nurse anesthetists will provide advice regarding licensure and practice of certified registered nurse anesthetists.

C. Graduate registered nurse anesthetist permit-to-practice may be issued, upon written request, provided all requirements have been met except national AANA certification.

(1) A permit may be issued following graduation from an approved school of nurse anesthesia to afford the applicant the opportunity for employment pending dissemination of the national qualifying examination results by the AANA *council on certification of nurse anesthetists*.

(2) GRNAs must function in an interdependent role as a member of a health care team and practice at the direction of and in collaboration with a physician, osteopathic physician, dentist or podiatrist.

(3) GRNAs may prescribe and administer medications only in collaboration with a physician, osteopathic physician, dentist or podiatrist in compliance with these rules.

(4) GRNAs permits will be issued to the employer(s).

(5) A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor(s) and name of prescription supervisor(s), is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice for the new place of employment. The permit will be issued directly to the new employing agency.

(6) The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GRNA permit.

(7) GRNA permits cannot be transferred, renewed or a duplicate be issued.

(8) GRNA permits expire on the

date specified on the permit.

(a) Permits shall be valid for approximately 12 months subsequent to the date of graduation from the nurse anesthesia program.

(b) Written proof of application to write the national qualifying exam must be received in the board office within 12 weeks of graduation from the nurse anesthesia program.

(c) Verification that applicant wrote the national qualifying examination, must be received in the board office within 3 weeks subsequent to the date of the examination.

(d) Failure of applicant to write the scheduled qualifying examination or if the exam is failed, will render the applicant ineligible to practice anesthesia in New Mexico and the employer must immediately return the permit-to-permit to the board office. It is the responsibility of the GRNA to request that the national certifying organization notify the board of the results of the examination.

D. A license to practice as a CRNA shall be issued only after receipt by the board of proof of AANA certification. Such proof must be submitted to the board prior to the expiration of the permit.

E. Exclusion: certified registered nurse anesthetists with lapsed AANA certification are not eligible for a permit-to-practice.

F. Prerequisites for licensure of CRNA by endorsement.

(1) Verification DIRECTLY from the licensing authority, which shall include graduation from an AANA *council on accreditation of nurse anesthetist educational program/school*.

(2) In lieu of verification of advanced practice licensure from the licensing authority, the board will accept documentation directly from that licensing authority that the state does not issue advanced practice licensure and a sworn affidavit from applicant that they practice as an advance practice nurse with year practice began.

(3) Verification by applicant of AANA certification/recertification.

(4) Certified registered nurse anesthetists must comply with the requirements for prescriptive authority as outlined in these rules.

(5) Complete and submit the required application for licensure by endorsement in accordance with all instructions including the required fee.

G. Qualifications for licensure as CRNA are pursuant to the Nursing Practice Act.

(1) Refer to Subsection A, 16.12.2.14 NMAC for licensure requirements.

(2) Continuing education is not required for initial CRNA licensure by endorsement. CE requirements must be met at the time of first renewal. Recertification by AANA *council on recertification of nurse anesthetists* will meet the mandatory CE requirements for CRNA licensure, in NM and from other compact states.

(3) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

H. A GRNA permit-to-practice may be issued, to a New Mexico employer(s) for an endorsee awaiting results on successful completion of AANA national certification. Refer to Subsections B and C, 16.12.2.14 NMAC for procedure and requirements.

I. A temporary certified registered nurse anesthetist license may be issued to an endorsee who:

(1) submits a completed endorsement application in accordance with instructions and fee;

(2) submits a copy of current AANA council of recertification of nurse anesthetist;

(3) the board will mail the temporary license to the ~~employing agency~~ endorsee;

(4) a temporary license is valid for a period not to exceed six (6) months from the date of application,

(5) a temporary license is not renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action;

(6) applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license;

(7) the discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

J. An initial certified registered nurse anesthetist license shall be valid for two (2) years. A letter of authorization will be issued to CRNAs who have RN multi-state licensure privileges from another nurse licensure compact states.

K. If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

L. Maintaining licensure as a certified registered nurse anesthetist.

(1) National Certification: CRNAs must maintain AANA *council on recertification of nurse anesthetist*. A copy of the recertification card must be presented at the time of each subsequent renewal.

(2) Continuing education: recerti-

fication by AANA council on recertification of nurse anesthetist is accepted for meeting mandatory CE requirement for NM and from other compact states.

M. Reactivation: to reactivate or reinstate licensure as a certified registered nurse anesthetist, the nurse must provide evidence of current recertification by the AANA council on recertification of nurse anesthetists.

N. Certified registered nurse anesthetist practice.

(1) The CRNA provides pre-operative, intra-operative and post-operative anesthesia care and related services, including ordering of diagnostic tests, in accordance with the current *american association of nurse anesthetists'* guidelines for nurse anesthesia practice.

(2) The CRNA functions in an interdependent role as a member of a health care team in which the medical care of the patient is directed by a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico.

(3) The CRNA may assume specific functions and/or perform specific procedures which are beyond the advanced educational preparation and certification for the CRNA provided the knowledge and skills required to perform the function and/or procedure emanates from a recognized body of knowledge and/or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions and/or performing specific procedures, which are beyond the CRNA's advanced educational preparation and certification, the CRNA is responsible for obtaining the appropriate knowledge, skills and supervision to ensure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(4) The CRNA collaborates as necessary with the licensed physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care of the patient. Collaboration means the process in which each health care provider contributes his/her respective expertise. Collaboration includes systematic formal planning and evaluation between the health care professionals involved in the collaborative practice arrangement.

(5) CRNAs who have fulfilled requirements for prescriptive authority may prescribe and administer therapeutic measures, including dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act within the specialty of anesthesia and practice setting.

(a) Requirements for prescriptive authority: in accordance with applicable state and federal laws, the CRNA who ful-

fills the following requirements may prescribe and administer dangerous drugs including controlled substances included in Schedules II through V of the Controlled Substance Act.

(i) Verifies 400 hours of work experience in which prescribing and administering dangerous drugs has occurred within the two (2) years immediately preceding the date of the application. Individuals who have not fulfilled this requirement must provide documentation of successful completion of 400 hours of prescribing dangerous drugs in a preceptorship with a CRNA or physician. The preceptorship must be completed within six (6) months and a letter of authorization will be issued for the duration of the preceptorship.

(ii) In order to prescribe controlled substances, the CRNA must provide the board of nursing with verification of current state controlled substances registration and current DEA number, unless the CRNA has met registration waiver criteria from the New Mexico board of pharmacy (Subsection I of 16.19.20.8 NMAC). CRNAs may not possess or prescribe controlled substances until they have both a current state controlled substances registration and a current DEA registration.

(iii) Once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary: the formulary will include agents related to the administration of anesthesia and ACLS protocol agents.

(i) All CRNAs must ~~maintain a~~ adhere to the current formulary ~~with the~~ approved by the board of nursing.

(ii) The initial formulary or a formulary with changes will be submitted to the board of medical examiners for a review.

(c) Prescription pads: the CRNA's name, address, and telephone number must be imprinted on the prescription pad. In the event that a CRNA is using a prescription pad printed with the names of more than one CRNA, the name of the CRNA for the individual prescription shall be indicated.

(d) Prescribing and administering: CRNAs who have fulfilled requirements for prescriptive authority as stated in these rules may prescribe and administer to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act, which have been prepared, packaged or fabricated by a registered pharmacist or doses or drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [61-11-22] and the New Mexico Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Distributing: CRNAs who have fulfilled requirements for prescriptive authority as stated in these rules may NOT distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substances Act.

(f) CRNAs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the requirements relative to prescriptive authority except those specifically required for controlled substances.

(6) Graduate registered nurse anesthetist practice.

(a) GRNAs may NOT distribute medications.

(b) GRNAs may practice and/or prescribe/administer medications only in collaboration with a physician, osteopathic physician, dentist or podiatrist.

(7) To insure competency and safe practice in specific regard to prescription writing practices in the state of NM.

(a) A list of current CRNAs and their status with regard to prescription writing shall be distributed at least annually and upon request to the board of pharmacy.

(b) Violation of these rules and/or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy.

(c) The board of nursing shall annually appoint qualified CRNAs to serve on the board of pharmacy disciplinary panel.

[1-1-98; 16.12.2.14 NMAC - Rn & A, 16 NMAC 12.2.13, 7-30-01; A, 12-31-01; A, 04-01-02; A, 1-2-04; A, 02-17-06]

16.12.2.15 CLINICAL NURSE SPECIALIST (CNS)

A. Requirements for licensure as a CNS:

(1) hold a current, valid RN license;

(2) successfully complete a clinical nurse specialist program at the master's or doctoral level in a defined clinical nursing specialty through an accredited institution of higher education; and

(3) provide evidence of successful accomplishment of certification by a national nursing organization, consistent with the defined clinical nursing specialty, which meets criteria as listed below:

(a) successfully complete a national certifying examination in the applicant's area of specialty;

(b) is certified by a national nursing organization;

(4) it is the responsibility of the applicant to provide documented evidence of his/her qualifications for licensure;

(5) any CNS requesting prescriptive authority must also comply with the regulations for prescriptive authority as out-

lined in these rules.

B. Procedure for licensure as a graduate CNS: applicant seeking licensure as a CNS shall be responsible for providing proof of meeting the requirements for licensure.

(1) The applicant shall complete the New Mexico CNS application and submit it along with all requested documents in accordance with the instructions.

(2) Upon acceptance of the completed application and receipt of all required supporting documents, the file is reviewed for qualifications and compliance with the requirements.

(3) Applicants who do not meet the requirements for licensure may request or be requested to meet with the board or their designee.

(4) CNSs are not eligible to practice in New Mexico as an CNS until so licensed by the New Mexico board in accordance with licensure procedures.

(5) The board may appoint CNSs to the advanced practice committee. These CNSs will provide advice regarding the licensure and practice of the CNS.

C. Graduate clinical nurse specialist (GCNS) permit to practice.

(1) GCNS permits may be issued upon written request, provided all requirements have been met except certification by a national nursing organization.

(a) GCNSs practice under the direct supervision of another CNS, CNP or physician in the specialty.

(b) GCNSs may prescribe medications only under the direct supervision of a licensed CNS, CNP or physician in compliance with these rules.

(c) GCNS permits will be issued to the employer.

(d) A letter of verification of intent to employ, on official letterhead including the name of the practice supervisor and the name of the prescription supervisor is required from each employer. Upon change in employment, the new employer must send the board a letter of intent to employ. The board will then issue a permit to practice at the new place of employment. The permit will be issued directly to the new employing agency.

(e) The name of the employment institution and the name(s) of the supervisor(s) shall be indicated on the GCNS permit.

(f) GCNS permits cannot be transferred, renewed or a duplicate issued.

(g) GCNS permits expire on the date specified on the permit.

(i) Permits shall be valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to prac-

tice as a GCNS. It is the responsibility of the GCNS to request that the national certifying organization notify the board of the results of the examination.

(ii) The permit for new graduates may be valid for a period not to exceed two 2 years.

(2) Exclusion: CNS with lapsed national certification are not eligible for a permit to practice.

(3) A license to practice as a CNS shall be issued only after receipt by the board of proof of certification by a national nursing organization. Such proof must be submitted to the board prior to the expiration of the permit.

D. Prerequisites for licensure of CNS by endorsement.

(1) Verification DIRECTLY from the licensing authority which shall include graduation from a clinical nurse specialist program in a defined clinical nursing specialty.

(2) In lieu of verification of advanced practice licensure from the licensing authority, the board will accept:

(a) documentation directly from the licensing authority that the state does not issue advanced practice licensure; and

(b) a sworn affidavit from applicant that they practice as an advance practice nurse with year practice began.

(3) Verification by applicant of national certification in a clinical specialty area.

(4) Clinical nurse specialist must comply with requirements for prescriptive authority as outlined in these rules.

(5) Complete and submit the required application for licensure by endorsement in accordance with all instructions including the required fee.

E. Qualifications for licensure as a CNS are pursuant to the nursing practice act.

(1) Refer to Subsection A of 16.12.15 NMAC for licensure requirements.

(2) Continuing education is not required for initial CNS licensure by endorsement. CE requirements must be met at the time of the first renewal.

(3) Disciplinary action taken or pending against a nursing license in another jurisdiction, or a conviction of a felony, may result in denial of a license.

F. A GCNS permit-to-practice may be issued to a New Mexico employer(s) for an endorsee awaiting results on successful completion of national certification. Refer to Subsections B and C of 16.12.2.15 NMAC for procedure and requirements.

G. A temporary clinical nurse specialist license may be issued to an endorsee who:

(1) submits a completed endorsement application in accordance with all instructions and fee;

~~[(a) name of issuing jurisdiction; and]~~

~~[(b) category of licensure and license number.]~~

(2) submits a copy of current national certification in a nursing specialty; when the state of former advanced practice licensure does not require national certification; ~~[a TL can be issued. Proof of]~~ national certification in a nursing specialty must be submitted to the board before a license will be issued;

~~[(3) has not completed, within five years immediately prior to the date of application to the board, a three credit hour pharmacology course at the advanced level or forty five (45) contact hours advanced level pharmacology continuing education course; completion of the course is required for licensure;]~~

~~[(4)](3)~~ the board will mail the temporary license to the applicant;

~~[(5)](4)~~ a temporary license is valid for a period not to exceed six (6) months from the date of application, is non renewable and becomes null and void upon issuance of a current license, expiration, or withdrawal by board action;

~~[(6)](5)~~ applicant is responsible for assuring that all requirements have been met and all documents have been received prior to the expiration date of the temporary license;

~~[(7)](6)~~ the discovery of inaccurate or false information, on the licensure application, may be subject to recall of the temporary license by the board and denial of licensure.

H. An initial clinical nurse specialist license shall be valid for two (2) years. A letter of authorization will be issued to CNSs who have RN multi-state licensure privilege from the nurse licensure compact states.

I. If the licensure process is not completed, the application becomes null and void one (1) year after date of last noted activity.

J. Authorization to expand scope of practice or who need recertification.

(1) A letter of authorization will be issued for the CNSs who through additional formal education have expanded their practice into another area of CNS practice or who need practice hours to recertify provided all requirements have been met except national certification.

(2) A letter of verification of intent to provide a preceptorship, on official letterhead including the name of the practice preceptor and the name of the prescription preceptor must be submitted to the

board of nursing.

(3) Practice must be under the direct supervision of a physician or New Mexico CNP or CNS in the specialty.

(4) Prescribing may be done only under the direct supervision of a licensed CNP or CNS or a physician in compliance with these rules.

(5) A letter of authorization will be issued to the preceptor.

(6) A letter of authorization cannot be transferred, renewed or a duplicate issued.

(7) A letter of authorization will expire on the date specified.

(a) A letter of authorization shall be valid not to exceed 6 months after the date of the national certifying examination. Those who fail the national certifying examination are rendered ineligible to practice in that area. It is the responsibility of the CNS to request that the national certifying organization notify the board of the results of the examination. A letter of authorization may be valid for a period not to exceed two (2) years.

(b) A letter of authorization will be valid for 6 months for those applicants recertifying.

(c) A letter of authorization shall be issued for the prescriptive authority preceptorship. This letter will only be valid for the duration of the preceptorship for expansion of scope of practice or recertification required hours of practice.

K. Maintaining licensure as a clinical nurse specialist.

(1) The CNS shall be nationally certified in the specialty by a nursing organization and maintain national certification. A copy of the specialty certification/recertification card shall be presented at the time of each subsequent renewal.

(2) Continuing education.

(a) The CNS shall accrue a total of fifty (50) contact hours of approved CE each renewal period. National certification or recertification as a CNS may not be used to fulfill any portion of the CE requirement.

(b) Thirty (30) contact hours, shall meet the requirements for licensure as an RN, and

(c) An additional twenty (20) contact hours, 15 of which must be pharmacology, shall meet the requirements for licensure as a CNS.

(d) CNS's from compact states are only required to fulfill CE requirement listed under (C).

~~(d)~~(e) The CE shall be in accordance with the requirements as set forth in these rules.

(3) Reactivation. To reactivate or reinstate licensure as a CNS, the nurse must provide evidence of meeting the CE requirements; evidence of current national certification must also be provided.

L. Clinical nurse specialist practice.

(1) The CNS is a nurse who through graduate level preparation has become an expert in a defined area of knowledge and practice in a selected clinical area of nursing. (Taken from the ANA Social Policy Statement)

(2) The CNS practices in accordance with the standards as established by the ANA.

(3) The CNS makes independent decisions in a specialized area of nursing practice, using knowledge about the health care needs of the individual, family and community. The CNS collaborates as necessary with other members of the health care team, when the needs are beyond the scope of practice of the CNS.

(4) The CNS may assume specific functions and/or perform specific procedures which are beyond the advanced educational preparation and certification for the CNS provided the knowledge and skills required to perform the function and/or procedure emanates from a recognized body of knowledge and/or advanced practice of nursing and the function or procedure is not prohibited by any law or statute. When assuming specific functions and/or performing specific procedures, which are beyond the CNS's advanced educational preparation and certification, the CNS is responsible for obtaining the appropriate knowledge, skills and supervision to assure he/she can perform the function/procedure safely and competently and recognize and respond to any complications that may arise.

(5) Carries out therapeutic regimens in the area of the specialty.

(6) The CNS who has fulfilled the requirements for prescriptive authority in the specialty area may prescribe and distribute therapeutic measures including dangerous drugs and controlled substances contained in Schedules II through V of the Controlled Substance Act within the scope of the specialty practice and setting.

(a) Requirements for prescriptive authority: In accordance with applicable state and federal laws, the CNS who fulfills the following requirements may prescribe and distribute dangerous drugs including controlled substances included in Schedules II through V of the Controlled Substance Act:

(i) verifies 400 hours of work experience in which prescribing dangerous drugs has occurred within the two (2) years immediately preceding the date of application and provide a copy of a transcript documenting successful completion of the a three credit hour pharmacology course, a three credit hour assessment course and a three credit hour pathophysiology course included as part of a graduate

level advanced practice nursing education program; forty-five (45) contact hours of advanced level pharmacology continuing education course may be substituted for the academic pharmacology; a certificate of completion must be provided that verifies continuing education, or

(ii) if 400 hours of work experience in which prescribing dangerous drugs cannot be verified, provide a copy of a transcript documenting successful completion of a three credit hour pharmacology course that is included as part of a graduate level advanced practice nursing education program within five years immediately prior to the date of application to the board; forty-five (45) contact hours of advanced level pharmacology continuing education course may be substituted for the academic pharmacology; a certificate of completion must be provided that verifies continuing education; the course must be related to the specialty and contain content in pharmacokinetics, pharmacodynamics, pharmacology of current/commonly used medications and application of drug therapy to the treatment of disease and/or the promotion of health, and

(iii) provide a copy of a transcript documenting successful completion of a three credit hour assessment course that is included as part of a graduate level advanced practice nursing education program; the course must be related to the specialty and include content supported by related clinical experience such that students gain knowledge and skills needed to perform comprehensive assessments to acquire data, make diagnoses of health status and formulate effective clinical management plans, and

(iv) provide a copy of a transcript documenting successful completion of a three credit hour pathophysiology course that is included as part of a graduate level advanced practice nursing education program; the course must be related to the specialty and include content in physiology and pathophysiology;

(v) provide a copy of a transcript documenting successful completion of a 400 hour university/college associated preceptor experience in the prescription of dangerous drugs within the two years immediately prior to the date of application to the board, or

(vi) after fulfilling ii, iii, and iv above, upon application to the board, a letter of authorization for a prescriptive authority preceptorship will be issued to complete a preceptorship, which must be completed within six (6) months;

(vii) in order to prescribe controlled substances, the CNS must provide the board of nursing with verification of current state controlled substances registration and current DEA number,

unless the CNS with prescriptive authority has met registration waiver criteria from the New Mexico board of pharmacy (Subsection I of 16.19.20.8 NMAC; CNSs may not possess, prescribe or distribute controlled substances until they have both a current state controlled substances registration and a current DEA registration;

(viii) once prescriptive authority requirements are met, the board will notify the board of pharmacy of completion of prescriptive authority requirements.

(b) Formulary. It is the CNS's responsibility to maintain a formulary of dangerous drugs and controlled substances that may be prescribed. The only drugs to be included in the formulary are those relevant to the CNS's area of specialty practice, scope of practice and clinical setting. The board of nursing reserves the right to audit the formulary. Licensees may be subject to disciplinary action by the board of nursing if noncompliant with the audit.

~~[(i) All CNSs must maintain a current formulary with the board of nursing.~~

~~[(ii) The board of nursing reserves the right to audit the formulary. Licensees may be subject to disciplinary action by the board of nursing if noncompliant with the audit.]~~

(c) Prescription pads. The CNS's name, address, and telephone number must be imprinted on the prescription pad. In the event that a CNS is using a prescription pad printed with the names of more than one CNS, the name of the CNS for the individual prescription shall be indicated.

(d) Distributing: CNSs who have fulfilled requirements for prescriptive authority as stated in these rules, may distribute to their patients dangerous drugs including controlled substances contained in Schedules II through V of the Controlled Substance Act, which have been prepared, packaged, or fabricated by the registered pharmacist or doses which have been pre-packaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [61-11-22] and the Drug, Device and Cosmetic Act for the benefit of the public good.

(e) Labeling: CNSs may label only those drugs which the CNS prescribes and distributes to patients under the CNS's care. The medication shall be properly labeled with the patient's name, date of issue, drug name and strength, instructions for use, drug expiration date, telephone number of the CNS. Labeling may be handwritten or a pre-printed fill-in label may be used. All information shall be properly documented in the patient record.

(f) CNSs who do not plan to prescribe controlled substances but do plan to prescribe dangerous drugs must meet the

requirements relative to prescriptive authority except those specifically required for controlled substances.

(7) Graduate clinical nurse specialist (GCNS) practice.

(a) GCNSs may not distribute medications.

(b) GCNSs may practice and/or prescribe medications only under the direct supervision of a licensed CNS, CNP or physician in the specialty.

(8) To insure competency and safe practice in specific regard to prescription writing practices in the state of NM:

(a) a list of current CNSs and their status with regard to prescription writing shall be distributed at least annually and upon request to the board of pharmacy;

(b) violation of these rules and/or disciplinary action taken by the board of nursing with regard to controlled substances shall be reported to the board of pharmacy;

(c) the board of nursing shall annually appoint qualified CNSs in each specialty to serve on the board of pharmacy disciplinary panel.

M. Advanced practice committee.

(1) The board may appoint a minimum of a 6-member advisory committee to assist the board in regulating the advanced practice of nursing.

(2) The committee shall assist and advise the board in the review of issues related to the advanced practice of nursing.

(3) The committee shall be composed of a least two representatives from each advanced practice area regulated by the board.

[1-1-98; 16.12.2.15 NMAC - Rn & A, 16 NMAC 12.2.13, 7-30-01; A, 12-31-01; A, 04-01-02; A, 1-2-04; A, 02-17-06]

16.12.2.16 DIVERSION PROGRAM FOR CHEMICALLY DEPENDENT NURSES

A. Purpose. The diversion program is a voluntary alternative to traditional disciplinary action for a nurse whose competencies may be impaired because of the habitual use of drugs and/or alcohol. Individuals may request admission into the program following the filing of a complaint against their nursing license or by self-referral.

(1) Admission into the diversion program.

(a) Nurses licensed in New Mexico who have had a complaint filed against their nursing license alleging the use and/or abuse of drugs/alcohol, or who voluntarily submit a written request shall be given an opportunity to be admitted into the diversion program.

(i) Following a complaint, individuals who do not accept the

opportunity for admission into the program shall be processed as a disciplinary case.

(ii) Individuals who voluntarily requested admission and do not complete the admission process within thirty (30) days of request may be subject to disciplinary action by the board.

(iii) It may be recommended that individuals obtain a professional evaluation for chemical dependency and/or mental health diagnosis and submit a copy of the evaluation to the diversion program.

(iv) The initial contract is a "no use" contract to include prescription medications unless written notification is given by the physician prescribing the medication.

(v) Signatures on the initial contract and amendments constitute a release of information for the diversion program to contact all supporting individuals.

(b) Request for admission shall be made, in writing, to the diversion program coordinator or executive director of the board of nursing.

(c) Each nurse requesting admission shall be scheduled for an admission interview and preparation of an initial contract.

(i) The initial contract shall include conditions which must be met by a participant.

(ii) The contract may be individualized but the form may not be substantially changed without the approval of the board.

(iii) The initial preparation of the contract will be done by the diversion program coordinator, executive director, or experienced regional advisory committee member.

(iv) Participants may be prohibited from access to narcotics, overtime, night shift work and agency/home health care work.

(2) Monitoring participants in the diversion program.

(a) Participants must assure that required written reports and drug screens are submitted in accordance with the provisions of the diversion program contract and contract amendments. Written reports and drug screens **MUST** be received regularly by the program.

(i) Written reports of the same type and/or several drug screens received together are not acceptable and may result in the participant being noncompliant.

(ii) Drug screens shall be scheduled randomly and shall be observed in accordance with the guidelines and protocols approved by the board.

(iii) Drug screens must include participant's drugs of choice.

(b) Participants are required to meet with representatives of the program periodically for an evaluation of their progress in recovery and participation in the program.

(i) After one year of acceptable compliance, amendments may be made in the participant's contract based on the participant's progress in recovery and participation in the program.

(ii) Contracts and contract amendments must be submitted with all required signatures within two (2) weeks of the meeting date.

(iii) Failure to meet regularly as scheduled may result in being reported to the board for noncompliance.

(c) Participant shall notify the diversion program coordinator and the executive director of the board, immediately, of a pending relocation out-of-the state of New Mexico. The participant shall complete and submit the out of state relocation form. The executive director shall notify the board of nursing in the state in which participant intends to practice that the licensee is a participant in the New Mexico board of nursing's diversion program for chemically dependent nurses. Participants who relocate out-of-state must comply with the NM diversion program requirements until participants have been discharged from the program.

(d) The confidential provisions of Section 61-3-29.1 NMSA 1978 are not in effect if the participant leaves New Mexico prior to discharge from the program or has disciplinary action taken or pending by the board.

(3) Relapses and noncompliance with the diversion program contract.

(a) Participants who are noncompliant with their contract and/or who do not cooperate with the program shall be reported to the board of nursing.

(i) Reports shall be made to the board using the participant's confidential file number.

(ii) The participant's name shall not be disclosed to the board until formal disciplinary proceedings occur.

(b) The diversion program coordinator or the executive director shall file a sworn complaint after a verbal or written report of a relapse, positive drug screen and/or no verbal or written communication with the diversion program for three (3) months.

(i) A relapse is defined as the unauthorized use of any mind-altering drug and/or alcohol.

(ii) The relapse shall be reported to the board of nursing at its next regularly scheduled meeting.

(c) The board shall move for a **notice of contemplated action** (NCA) and may summarily suspend the license of the

participant for a period not to exceed ninety (90) days pending the completion of a formal disciplinary proceeding before the board of nursing for relapse or positive drug screen.

(d) An individual whose license is reinstated following a summary suspension shall remit the required reinstatement fee, ~~[of one hundred dollars (\$100.00)].~~

(e) Participants who appear before the board for a disciplinary hearing may be required to enter into a new diversion program contract.

(4) Discharge from the diversion program.

(a) Participants who remain drug and/or alcohol free for ~~[two (2)]~~ three (3) full years and comply with all conditions of their diversion program contract for at least ~~[twelve (12)]~~ twenty-four (24) months may request discharge from the diversion program.

(b) Participants must be evaluated for discharge by a quorum of advisory committee members or the diversion program coordinator and must submit letters of recommendation from supervisor, sponsor, counselor (if applicable), and self.

(c) The ~~[advisory committee]~~ diversion program coordinator shall make a recommendation to the board of nursing at its next regularly scheduled meeting regarding the approval/disapproval of discharge for the participant.

(5) Regional advisory committees.

(a) The board shall establish regional advisory committees throughout the state in accordance with Section 61-3-29.1 NMSA 1978 for the purpose of assisting the program coordinator to conduct admission interviews, prepare initial contract and to periodically evaluate participant's progress in recovery and participation in the program.

(b) Members of advisory committees shall be appointed by the board and shall function under the direction of the board. No current member of the board shall be appointed to an advisory committee.

(6) Diversion program participant's records.

(a) All program participants' records are confidential and are maintained in accordance with Section 61-3-29.1 NMSA 1978.

(b) Upon discharge from the program, all files and records shall be destroyed.

(c) Records concerning licensees who violate the diversion program contract shall become a matter of public record upon disciplinary action by the board of nursing. ~~[File]~~ This disciplinary record may contain complaint, investigation report, documentary evidence, contract, drug screen reports,

documents relevant to the hearing, notice of contemplated action, notice of hearing. ~~[All other portions of the diversion program file shall be destroyed.]~~

[1-1-98; 16.12.2.16 NMAC - Rn & A, 16 NMAC 12.2.14, 7-30-01; A, 02-17-06]

NEW MEXICO BOARD OF NURSING

This is an amendment to 16.12.3 NMAC, Sections 7, 8, 10, 12, & 13, effective 02-17-06.

16.12.3.7 DEFINITIONS:

A. "Accreditation", recognition of an institution of learning by a board recognized national nursing organization as maintaining prescribed standards requisite for its graduates to gain admission to other reputable institutions of higher learning or achieve credentials for professional practice.

B. "Approval", official or formal consent, confirmation or sanction.

C. "Associate degree program", a formalized program of study, usually organized for completion within a two-year academic period, which prepares graduates for an associate degree in nursing and eligibility to take the national examination for registered nurses. The program is conducted as an integral department or division within a college or university.

D. "Baccalaureate degree program", a formalized program of study, usually organized for completion within a four-year academic period, which prepares graduates for a degree in nursing and eligibility to take the national licensing examination for registered nursing. The program is conducted as an integral department or division within a university or college.

E. "Board", New Mexico board of nursing.

F. "Clinical facilities", institutions which are established for the delivery of nursing care services (hospital, extended care facilities, nursing homes, medical clinics, public health facilities, physician's offices, out-patient clinics, etc.).

G. "Clock/contact hour", unit of measurement used by educational institutions to determine work load.

H. "Curriculum", a course of study which is offered within a particular program.

I. "Director", the nurse educator (regardless of the official title assigned by any specific institution: administrator, dean, coordinator, chairperson, etc.), who is delegated the administrative responsibility and authority for the direction of the basic educational program in nursing.

J. "Educational institution", an institution within the educational system which is organized and accredited for teaching and study (university, high school, post-secondary, approved area vocational institution).

K. "Involuntary closure", mandatory closure by the board for failure of a program to meet the minimum requirements as established by the board.

L. "Must", a requirement.

M. "National licensing examination", examination for licensure as provided by the national council of state boards of nursing.

N. "Parent institution", an institution within the educational system which is organized and accredited for teaching and study (university, college, high school).

O. "Practical nurse program", a formalized program, which prepares a graduate for a diploma or certificate and eligibility to take the national licensing examination for practical nursing. The program is conducted as an integral part of an educational institution.

P. "Pre-licensure program", nursing education program that prepares an individual for the national licensing examination for registered nursing or practical nursing.

Q. "Program", the curriculum and all of the activities/functions that take place which are necessary to fulfill the purpose of nursing education.

R. "Recommendations", statements which should guide programs of nursing in the development and direction of the program but which are not mandatory.

S. "Regulation and policies", statements governing practice of the board of nursing in the approval of a program of nursing.

T. "Requirements", conditions which any program of nursing shall meet to obtain approval.

U. "Supervision of part-time faculty without msn", initial verification of instructor's knowledge and skills in supervision of students in clinical settings, followed by periodic observation, direction and evaluation of instructor's knowledge and skills related to supervision of students in clinical settings.

[U.]V. "Shall", mandatory; a requirement.

[V.]W. "Should", a suggestion or recommendation; not a requirement.

[1-1-98; 16.12.3.7 NMAC - Rn & A, 16 NMAC 12.3.7, 7-30-01; A, 2-17-06]

16.12.3.8 TYPES OF APPROVAL

A. Initial Approval.

(1) Initial approval shall be granted

as outlined in numbers 16.12.3.11 NMAC "requirements for the establishment of new programs or reopening programs" and 16.12.3.12 NMAC "minimum standards for nursing programs" of these rules. Initial approval is valid from the time granted through the graduation of the first nursing class.

(2) The program shall have initial approval prior to recruiting and enrolling students into the nursing program.

(3) Immediately preceding graduation of the first nursing class, a self-evaluation report of compliance with the "minimum standards for nursing programs" shall be submitted to the board and an approval visit shall be made by representatives of the board for consideration of continued approval.

B. Full Approval.

(1) Programs that are not nationally accredited:

(a) full approval status shall be granted after the board verifies through a site visit that the "minimum standards for nursing programs" have been met;

(b) full approval for a continuing period not to exceed eight (8) years, shall be granted to nursing education programs if, in the opinion of the board, the program continues to demonstrate compliance with minimum standards for nursing programs.

(2) Nationally accredited programs:

(a) programs which have received accreditation from a board-recognized national nursing accreditation agency shall file evidence of initial accreditation with the board, and therefore shall file notice of any change in program accreditation status and report from accrediting agency's board of review; the board shall grant approval based upon evidence of such accreditation;

(b) programs holding approval based upon national accreditation are also responsible for complying with "minimum standards for nursing programs";

(c) full approval for a continuing period not to exceed ~~eight (8)~~ ten (10) years, shall be granted to nursing programs with full national accreditation.

C. Conditional Approval.

(1) The nursing education program may be placed on conditional approval when there is evidence of substantial non-compliance with the "minimum standards for nursing programs" as specified in these rules.

(a) When on conditional approval status, the board of nursing may direct the program to cease admissions.

(b) A closure plan which includes date of closure, provisions that will be made for students to complete their nursing education, and the location of the permanently stored program records will be submitted to the board six months after the program is

placed on a conditional approval.

(2) The following situations are cause for review and/or a site visit by the board to determine if the minimum standards for nursing programs are being met:

(a) complaints relating to violations of the "minimum standards for nursing programs";

(b) denial, withdrawal or change of program accreditation status by a board-recognized national nursing accreditations agency or general academic accreditation agency;

(c) failure to obtain board approval of changes that require approval of the board under "program changes";

(d) providing false or misleading information to students or the public concerning the nursing program;

(e) violation of the rules or policies;

(f) continuous disruptions in retaining a qualified director or faculty, resulting in disorganization and breakdown of supervision and teaching of students;

(g) non-compliance with the program's stated philosophy, objectives, policies, and curriculum resulting in unsatisfactory faculty/student achievement;

(h) failure to provide clinical experiences necessary to meet the objectives of the nursing program;

(i) less than a passing rate of 80% of first time writers of the national licensing examination;

(i) when a program fails to maintain a passing rate of 80% of first time writers for one year, a letter will be sent to the program notifying them that they are not in compliance with the rules and to provide the board with an assessment of possible problem areas within six (6) months;

(ii) when a program fails to maintain a passing rate of 80% of first time writers for two consecutive years, a report addressing areas of concern with a plan for corrective action will be submitted to the board within 6 months and an evaluation visit may be required;

(iii) when a program fails to maintain a passing rate of 80% of first time writers for one year and then achieves the passing rate the second year and then fails to maintain the passing rate the third year, an assessment of possible problem areas will be done within 6 months and an evaluation visit ~~will~~ may be conducted;

(iv) when a program fails to maintain a passing rate of 80% of first time writers for three consecutive years, the program may be placed on conditional approval and an evaluation visit will be required.

(3) Conditional approval is not

renewable. Failure to correct deficiencies within the designated time period will result in withdrawal of approval and involuntary closure of the program by the board.

(4) The board may deny approval or withdraw approval of a nursing education program that does not meet the "minimum standards for nursing programs."

[1-1-98; 16.12.3.8 NMAC - Rn & A, 16 NMAC 12.3.8, 7-30-01; A, 1-2-04; A, 02-17-06]

16.12.3.10 GENERAL REQUIREMENTS

A. Prior to the end of the approval period, a site visit shall be made by representatives of the board of nursing to all nursing education programs not nationally accredited.

B. Representatives of the parent institution and nursing program shall be notified, in writing, regarding the approval status of the program.

C. A report of any visit, made by representative(s) of the board, shall be provided to the program of nursing and officials of the institution.

D. In the event that deficiencies are found, the board shall designate a reasonable time period to correct the deficiencies.

E. An annual report which includes information regarding compliance with 16.12.3.12 NMAC, minimum standards for nursing programs shall be submitted to the board by the nursing education program. The ~~[NLN self study]~~ national accreditation report may serve as the annual report in the year in which the nursing program is scheduled for an NLN visit. [1-1-98; 16.12.3.10 NMAC - Rn, 16 NMAC 12.3.10, 7-30-01; A, 02-17-06]

16.12.3.12 MINIMUM STANDARDS FOR NURSING PROGRAMS:

A. Administration and organization.

(1) The nursing education program shall be an integral part of a ~~[regional]~~ accredited institution recognized by the US department of education and authorized by this state to confer credentials in nursing.

(2) The nursing programs shall have status comparable with other academic units. There shall be an organizational chart which identifies the relationships, within and between the program and other administrative areas of the parent institution.

(3) The administration of the parent institution shall provide adequate financial support for the nursing program.

(4) The parent institution shall designate a qualified, nursing director who is licensed to practice as a registered nurse in New Mexico or in a compact state. The nursing program director shall have respon-

sibility and authority comparable with the administrative position including but not limited to development, implementation, evaluation, administration and organization of the nursing program.

(5) Faculty, administration and students shall have the opportunity to participate in the governance of the nursing program and the parent institution.

B. Curriculum.

(1) The mission of the nursing unit shall be consistent with that of the parent institution.

(2) The curriculum shall be developed, implemented, controlled and evaluated by the faculty within the framework of the mission, goals and outcomes of the nursing program.

(3) The curriculum shall extend over a period of time sufficient to provide essential, sequenced learning experiences which enable a student to develop nursing competence and shall evidence an organized pattern of instruction consistent with principles of learning and educational practice.

(4) Clinical experience shall provide opportunities for application of theory and for achievement of the stated objectives in a client care setting, and shall include clinical learning experience to develop nursing skills required for safe practice. Student/faculty ratio in the clinical setting shall be based upon the level of students, the acuity level of the clients, the characteristics of the practice setting and shall not exceed 8:1. Clinical evaluation tools for evaluation of students progress, performance and learning experiences shall be stated in measurable terms directly related to course objectives.

(5) The curriculum shall provide instruction in the discipline of nursing, appropriate to the RN or PN level, across the lifespan and include content relevant to national and local health care needs. Support courses shall be an integral part of the nursing curriculum.

(6) A plan for curriculum and program evaluation shall be in place.

C. Students: There shall be written policy statements consistent with those of the parent institutions which shall be made available to the student. Students shall be provided with opportunities to participate in the development and revisions of policies and procedures related to students including but not limited to philosophy, objectives, clinical sites, learning experiences, and evaluation of the program.

D. Faculty requirements.

(1) The director of the nursing program and all nursing program faculty shall hold current licenses to practice as registered nurses in New Mexico or in a compact state.

~~[(2)] [Faculty shall meet the edu-~~

~~ational requirements of the parent institution and those requirements shall be at least comparable to other faculty members of like status.]~~

~~[(3)]~~ (2) Beginning on January 1, 2002, all new nursing program directors and nursing faculty must meet the following requirements:

(a) the director shall hold a graduate degree in nursing:

(i) preferably have three years of full time teaching experience in a nursing program and;

(ii) a formal plan will be in place which will include an orientation to college administration and nursing program development and implementation and evaluation;

(b) nursing faculty who teach full-time shall hold a graduate degree in nursing; faculty without a graduate degree may be employed for one year and then are required to complete a graduate degree within the next five years;

(c) nursing faculty who teach part time shall hold a minimum of a bachelors degree in nursing; faculty without a BSN may be employed for one year and then are required to ~~[be enrolled in]~~ complete a BSN completion program or msn program within 5 years;

(i) a master's prepared faculty shall supervise part-time faculty without msn;

(ii) part-time faculty shall be oriented to the curriculum, and provided with instruction in clinical teaching skills.

(4) Personnel policies for nursing faculty shall be the same as those in effect for other faculty with the exception of:

(a) at least 80% of the director's assignment should be administrative; additional administrative time should be given when preparing for accreditation, curriculum revision and other such activities;

(b) nursing faculty workload shall be calculated by teaching clock/contact hour.

E. Resources: The parent institution shall provide sufficient resources, services and facilities to operate the nursing program.

[1-1-98; 16.12.3.12 NMAC - Rn & A, 16 NMAC 12.3.12, 7-30-01; A, 12-31-01; A, 1-2-04; A, 6-01-04; A, 02-17-06]

16.12.3.13 PROGRAM CHANGES REQUIRING BOARD OF NURSING APPROVAL:

Major changes that affect the program's compliance with the "minimum standards for nursing programs" require board approval.

[1-1-98; 16.12.3.13 NMAC - Rn, 16 NMAC 12.3.12, 7-30-01; A, 02-17-06]

NEW MEXICO BOARD OF NURSING

This is an amendment to 16.12.6 NMAC, Sections 8 and 11, effective 02-17-06.

16.12.6.8 ISSUANCE OF A LICENSE BY A COMPACT PARTY STATE:

A. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:

(1) driver's license with a home address;

(2) voter registration card displaying a home address; or

(3) federal income tax return declaring the primary state of residence.

B. A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty (30) days.

C. The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the thirty (30) day period in paragraph (2) shall be stayed until resolution of the pending investigation.

D. The former home state license shall no longer be valid upon the issuance of a new home state license.

E. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days and the former home state may take action in accordance with that state's law and rules.

F. Licensee's who have been denied multistate privilege or have had their license denied or revoked in a compact state may not practice in that compact state with a NM compact license.

[16.12.6.8 NMAC - N, 1-2-04; A, 2-17-06]

16.12.6.11 MULTISTATE LICENSURE PRIVILEGE-REGISTRATION:

A. A nurse not licensed in New Mexico, who wishes to practice in this state pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact [shall] should provide to the New Mexico board of nursing a completed registration form within thirty (30) days after beginning to practice, that contains:

(1) the nurse's full name;

(2) home state residence address;

(3) temporary residence address in New Mexico;

(4) phone number or e-mail address;

(5) the identity of the nurse's home state;

(6) the type of nursing license the nurse holds;

(7) a declaration that the license is current and in good standing; and

(8) name, address and phone number of the employing agency.

B. The nurse who has practiced nursing in New Mexico pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact who wishes to cease practicing in the state shall notify the board in writing of the date upon which the nurse will no longer practice.

[16.12.6.11 NMAC - N, 1-2-04; A, 2-17-06]

NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION

This is an emergency amendment to 17.11.10 NMAC Sections 7, 8 and 9 and an amendment adding a new Section 31, effective December 28, 2005.

17.11.10.7 DEFINITIONS: In addition to the definitions contained in Section 63-9H-3 NMSA 1978, as used in this rule:

A. "access line" means the connection of the end-user customer to the public switched network, and is not limited to wireline or any other technology;

B. "administrator" means the person designated by the commission to administer the fund;

C. "basic local exchange rate" means an incumbent local exchange carrier's tariffed, monthly, flat single-line rate charged to its retail customers for the provision of local exchange service;

D. "carrier" means an entity that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico;

E. "commercial mobile radio service (CMRS)" means a designation by the federal communications commission for any carrier or licensee whose wireless network is connected to the public switched telephone network or is operated for profit;

F. "commission" means the New Mexico public regulation commission;

G. "contributing company" means any carrier that provides intrastate retail public telecommunications services or comparable retail alternative

services in New Mexico;

H. "eligible telecommunications carrier (ETC)" means an entity with New Mexico operations that provides retail telecommunications services that has been designated by the commission as eligible to receive disbursements from the fund or from the federal universal service fund;

I. "exempt customer" means an end-user of telecommunications service that is the state of New Mexico, a county, a municipality or other governmental entity; a public school district; a public institution of higher education; an Indian nation, tribe, or pueblo; a private telecommunications network; or a person eligible to receive reduced rates under a low-income telephone assistance plan created by the federal government or the state of New Mexico;

J. "fund" means the state of New Mexico universal service fund established pursuant to, Section 63-9H-6 NMSA 1978 and this rule;

K. "historical access rate" means the composite per-minute intrastate switched access charge in effect for a carrier as of July 1, 2005;

L. "historical collection factor" means the ratio, for calendar year 2004, of intrastate switched access charge revenue collected by a carrier to its gross charges for intrastate switched access, except that the historical collection factor may not exceed 1.0;

M. "imputed benchmark revenue" means the difference between the affordability benchmark rates established by the commission pursuant to this rule and the carrier's basic local exchange residential and business rates in effect as of July 1, 2005, multiplied by the number of basic local exchange residential and business lines served by the carrier as of December 31, 2004 [~~with the number of business lines to include each line providing the customer with a New Mexico telephone number, including lines delivered through tariffs other than the basic business local exchange service tariff~~]; imputed benchmark revenue shall not be less than zero;

N. "interexchange carrier (IXC)" means an entity that provides intrastate toll services in New Mexico;

O. "intrastate retail telecommunications revenue" means the revenue collected from the sale of intrastate telecommunications services to end users; for voice over internet protocol (VOIP) and similar services, the portion of total retail revenues attributable to intrastate retail telecommunications shall be equal to the proportion of calls originating and terminating in New Mexico to all calls originating in New Mexico;

P. "intrastate retail telecommunications services" means serv-

ices including, but not limited to, all types of local exchange service; non-basic, vertical or discretionary services, also known as advanced features, or premium services, such as, but not limited to, call waiting, call forwarding, and caller ID; listing services; directory assistance services; cellular telephone and paging services; commercial mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll-free services; 900 services and other informational services; message telephone services (MTS or toll; CENTREX, Centron and centron-like services; video conferencing and teleconferencing services; the resale of intrastate telecommunications services; payphone services; services that provide telecommunications through a New Mexico telephone number using voice over internet protocol (VOIP) or comparable technologies; any services regulated by the commission; and such other services as the commission may by order designate from time to time as equivalent or similar to the services listed above, without regard to the technology used to deliver such services;

Q. "intrastate switched access charge" means a charge levied by a carrier for the availability and use of its facilities for origination and termination of intrastate interexchange calls as contained in tariffs approved by the commission;

R. "local exchange carrier (LEC)" means an entity that provides local exchange service in New Mexico;

S. "New Mexico operations" means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico;

T. "New Mexico telephone number" means a North American numbering plan (NANP) number that provides the ability to receive calls from the public switched telephone network; and is within an area code designated to New Mexico or is a non-geographic numbering plan area (NPA) (e.g. 900) number associated with a New Mexico physical address;

U. "rural area" means a local exchange carrier's study area that (1) does not include either: (a) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the bureau of the census; or (b) any territory, incorporated or unincorporated, included in an urbanized area as defined by the bureau of census; (2) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines; (3) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or (4) has less than 15

percent of its access lines in communities of more than 50,000;

V. "service area" means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).

[17.11.10.7 NMAC - Rp, 17 NMAC 13.10.7, 11/30/05; A/E, 12/28/05]

17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES:

A. Effective April 1, 2006, a local exchange carrier's intrastate switched access charges may not exceed its historical access rate, less one-third of the difference between its historical access rate and the composite interstate switched access rate based on rates approved by the federal communications commission as of January 1, 2006.

B. Effective January 1, 2007, a local exchange carrier's intrastate switched access charges may not exceed its historical access rate, less two-thirds of the difference between its historical access rate and the composite interstate switched access rate based on rates approved by the federal communications commission as of January 1, 2006.

C. Effective January 1, 2008, a local exchange carrier's intrastate switched access charges may not exceed the interstate switched access rates approved by the federal communications commission as of January 1, 2006, and its intrastate switched access elements and structure shall conform to the interstate switched access elements and structure approved by the federal communications commission.

D. A local exchange carrier may reduce its intrastate switched access charges to interstate levels and may adjust its intrastate elements and structure to conform to interstate elements and structure more rapidly than the minimum adjustments required by this section.

E. Prior to January 6, 2006, each local exchange carrier shall submit to the administrator and the commission the schedule of its intrastate access charge rate reductions in conformity with this rule and shall submit to the commission proposed tariff revisions reflecting the schedule of rate reductions and other changes necessary to assure that, upon completion of the reductions, all tariffed intrastate switched access charge elements and structure will match the tariffed interstate switched access charge elements and structure for that carrier as of January 1, 2006.

F. With respect to any local exchange carrier that opts to phase in its intrastate access charge rate reductions in conformity with the requirements of this section, any increase in its local residential

and local business exchange rates toward the affordability benchmark rates and the carrier's imputed benchmark revenue shall be phased in on the same schedule as, and proportionately to, its intrastate access charge reductions[~~except as provided for in Subsection E 17.11.10.9 NMAC of this rule~~].

G. The commission, on its own motion or on the motion of a party or the administrator, may order the revision of a local exchange carrier's intrastate access charge rate reduction schedule.

H. Each local exchange carrier must advise the commission in writing of the method or combination of methods that it elects and the timing of its revenue neutral recovery on or before January 6, 2006 and shall also so advise the administrator within a reasonable time following commencement of the administrator's duties; each carrier adjusting a local exchange rate pursuant to this rule shall timely file a revised tariff with the commission.

I. On or after May 1, 2008, the commission may, upon motion of a carrier or the administrator, or upon the commission's own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier's tariffed interstate switched access service charge rates, elements or structure subsequent to January 1, 2006.

[17.11.10.8 NMAC - N, 11/30/05; A/E, 12/28/05]

17.11.10.9 AFFORDABILITY BENCHMARK RATES:

A. The following residential and business rates are established as initial affordability benchmark rates to be utilized in determining the level of support available from the fund:

(1) the initial residential benchmark rate shall be equal to Qwest's basic residential exchange rate after Qwest's basic residential and business local exchange rates have been increased to compensate Qwest for its revenue loss resulting from the intrastate switched access charge reductions required by this rule and the increases applied to Qwest's residential and business rates in an equal per line amount; the rate used to determine the residential benchmark shall be the flat rated residential basic local exchange rate, excluding any extended area service (EAS) rates, vertical services, toll or other additional features or services;

(2) the initial business benchmark rate shall be [equal to Qwest's basic business exchange rate increased to compensate Qwest for that portion of its revenue loss resulting from the intrastate switched access charge reductions required by this rule and

~~the increases applied to Qwest's residential and business rates in an equal per line amount] carrier-specific and shall be equal to the existing business basic exchange rate of each local exchange carrier plus the difference between Qwest's existing basic business basic exchange rate and Qwest's basic business basic exchange rate after Qwest's rates are increased to compensate Qwest for its revenue loss resulting from the intrastate switched access charge reductions required by this rule and the increases are applied to Qwest's business and residential lines in an equal per line amount; the rate used to determine the business benchmark rate shall be the flat rated local one-party business exchange rate, excluding EAS rates, vertical services, toll or other additional features or services; if a carrier's tariffed business rate at the time of the effective date of this rule exceeds the Qwest business rate after the increases provided above, the carrier's initial business benchmark rate shall be its tariffed business rate on that date.~~

(3) each Qwest residential and business line that provides the customer with a New Mexico telephone number, including lines delivered through tariffs other than the basic local exchange service tariffs, shall be counted for the purposes of calculating the per line amount of revenue required to offset Qwest's loss of switched access charge revenue.

B. The commission may conduct a proceeding to establish new affordability benchmark rates not less than every three years.

C. With respect to any local exchange carrier that chooses to phase in its decrease of intrastate access charges incrementally as permitted by 17.11.10.8 NMAC, rather than implementing the full reduction of intrastate access charges to interstate levels immediately on April 1, 2006, the imputed benchmark revenue attributable to that carrier shall be phased in at the same times, and proportionately to, the reductions in intrastate access charges; ~~except as provided for in Subsection E of 17.11.10.9 NMAC of this rule.~~

D. Each local exchange carrier that is an ETC reducing intrastate switched access charges pursuant to this rule may offset such reductions on a revenue neutral basis, if it is in compliance with its contribution requirements under this rule, by (1) adjusting its residential and business basic local exchange rates up to levels not exceeding the affordability benchmark rates determined by the commission, or (2) obtaining support from the fund for the difference between the affordability benchmark rates and the residential and business basic local exchange rates that would be needed to accomplish revenue neutral offsets, or (3) a combination of the

two methods stated herein.

~~[E. A local exchange carrier may elect to phase in the increase in its business basic local exchange rate to reach the business affordability benchmark two years after it fully phases in its switched access charge reductions, and receive support from the fund equal to the reduction in imputed benchmark revenue resulting from the extended phase in schedule, under the following conditions:]~~

~~[(1) the carrier's basic business local exchange rate on July 1, 2005 was more than \$10 below the benchmark rate established in (A)(2) of this section;]~~

~~[(2) the carrier phases in not more than 50% of its switched access charge reductions prior to January 1, 2007;]~~

~~[(3) the carrier's net income divided by its number of total access lines, as stated in its 2004 annual report, was less than \$17.50;]~~

~~[(4) the additional two years of phase in for the business affordability benchmark shall be taken in even increments.]~~

[17.11.10.9 NMAC - N, 11/30/05; A/E, 12/28/05]

17.11.10.31 E M E R G E N C Y AMENDMENTS: The commission finds that the amendments to this rule consisting of: (A) in Subsection M of Section 17.11.10.7 NMAC adding the words "local exchange" after the words "the carrier's basic, adding the words "basic local exchange" following the words "multiplied by the number of", and striking the words "with the number of business lines to include each line providing the customer with a New Mexico telephone number, including lines delivered through tariffs other than the basic business local exchange service tariff" following the words "as of December 31, 2004;" (B) at the end of Subsection F of 17.11.10.8 NMAC, deleting the words "except as provided for in Subsection E 17.11.10.9 NMAC of this rule;" (C) in Subsection A (2) of Section 17.11.10.9 NMAC, deleting the words "equal to Qwest's basic business exchange rate increased to compensate Qwest for that portion of its revenue loss resulting from the intrastate switched access charge reductions required by this rule and the increases applied to Qwest's residential and business rates in an equal per line amount" and adding in their place the words "carrier-specific and shall be equal to the existing business basic exchange rate of each local exchange carrier plus the difference between Qwest's existing basic business basic exchange rate and Qwest's basic business basic exchange rate after Qwest's rates are increased to compensate Qwest for its revenue loss resulting from the intrastate switched access charge reductions required

by this rule and the increases are applied to Qwest's business and residential lines in an equal per line amount;" (D) at the end of Subsection A (2) of Section 17.11.10.9 NMAC, adding the words "if a carrier's tariffed business rate at the time of the effective date of this rule exceeds the Qwest business rate after the increases provided above, the carrier's initial business benchmark rate shall be its tariffed business rate on that date;" (5) at the end of Subsection C of 17.11.10.9 NMAC deleting the words "except as provided for in Subsection E of 17.11.10.9 NMAC of this rule;" (E) in Subsection D of 17.11.10.9 NMAC adding the word "local" following the words "adjusting its residential and business basic" and adding the word "local" following the words "and the residential and business basic;" and (F) deleting the entirety of Subsection E of 17.11.10.9 NMAC require immediate adoption for the preservation of the general welfare and therefore constitute an emergency amendment to this rule within the meaning of NMSA 1978, Section 8-8-15.C and 1.24.1.7 I NMAC. Specifically, the commission finds that failure to implement the changes immediately would severely impair the ability of the commission, the administrator and contributing companies to (a) correctly determine business benchmark rates (b) correctly determine revenue requirements from the fund due to ETCs; (c) correctly determine the size of the fund; (d) correctly determine contributions to the fund due from contributing companies; and (e) comply with the requirement of NMSA 1978, Section 63-9H-6.C that intrastate access charge reductions be revenue neutral by the deadlines set Subsection E and Subsection H of 17.11.10.8 NMAC and NMSA 1978, Section 63-9H-6.I.

[17.11.10.31 NMAC - N/E, 12/28/05]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

14.6.3 NMAC, Housing and Construction, Construction Industries Licensing, Contractor's License Requirements (filed 10-16-2000) is repealed and replaced by 14.6.3 NMAC, Housing and Construction, Construction Industries Licensing, Contractor's License Requirements, effective 2-1-06.

14.6.4 NMAC, Housing and Construction, Construction Industries Licensing, Journeyman Certification (filed 10-16-2000) is repealed and replaced by 14.6.4 NMAC, Housing and Construction,

Construction Industries Licensing, Journeyman Certification, effective 2-1-06.

14.6.6 NMAC, Housing and Construction, Construction Industries Licensing, Classifications and Scopes (filed May 27, 2004) is repealed and replaced by 14.6.6 NMAC, Housing and Construction, Construction Industries Licensing, Classifications and Scopes, effective 2/1/06.

19.15.40 NMAC, New Mexico Liquified Petroleum Gas Standard (filed 02-13-02) is repealed and replaced by 19.15.40 NMAC, New Mexico Liquified Petroleum Gas Standard, effective 2-1-06.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

TITLE 14 HOUSING AND CONSTRUCTION CHAPTER 6 CONSTRUCTION INDUSTRIES LICENSING PART 3 CONTRACTOR'S LICENSE REQUIREMENTS

14.6.3.1 ISSUING AGENCY: The Construction Industries Division (CID) of the Regulation and Licensing Department.
[14.6.3.1 NMAC - Rp, 14.6.3.1 NMAC, 2-1-06]

14.6.3.2 SCOPE: This rule applies to individuals seeking to obtain a license or certificate issued by CID.
[14.6.3.2 NMAC - Rp, 14.6.3.2 NMAC, 2-1-06]

14.6.3.3 STATUTORY AUTHORITY: NMSA 1978, Sections 60-13-14.9 and 40-5A-1 through 9.
[14.6.3.3 NMAC - Rp, 14.6.3.3 NMAC, 2-1-06]

14.6.3.4 DURATION: Permanent.
[14.6.3.4 NMAC - Rp, 14.6.3.4 NMAC, 2-1-06]

14.6.3.5 EFFECTIVE DATE: February 1, 2006, unless a later date is cited at the end of a section.
[14.6.3.5 NMAC - Rp, 14.6.3.5 NMAC, 2-1-06]

14.6.3.6 OBJECTIVE: The objective of 14.6.3 NMAC is to set forth general provisions governing contractor licensing in New Mexico.
[14.6.3.6 NMAC - Rp, 14.6.3.6 NMAC, 2-1-06]

14.6.3.7 DEFINITIONS:
[14.6.3.7 NMAC - Rp, 14.6.3.7 NMAC, 2-1-06]
[See NMSA 1978, Section 60-13-3.]

14.6.3.8 LICENSE AND QUALIFYING PARTY REQUIREMENTS.

A. General information.

(1) Any person engaged in contracting in the state of New Mexico must be validly licensed pursuant to the Construction Industries Licensing Act (Act), NMSA 1978, Section 60-13-1 et. seq., and the New Mexico Administrative Code, Title 14.

(2) No business entity, the majority of which is owned by an individual who is seventeen (17) years of age or younger, is eligible for licensure.

(3) Contractor licenses issued by CID:

(a) are issued only to qualified business entities which employ or are owned by one or more qualifying parties validly certified by CID to perform the classification of contracting in which the licensee intends to engage;

(b) grant only the authority to engage in contracting in the classification specified on the license issued to the entity, and on the certificate issued to its qualifying party;

(c) are not transferable and may not be used by any person other than the entity to which it is issued, and any entity that permits another person to use its license, or knows that its license is being used by another person and fails to promptly notify CID of such use, shall be subject to disciplinary action, up to and including revocation of the license; and

(d) authorize only the entity as named on the license to engage in contracting and no licensee may engage in contracting using a name other than the name that is shown on the license issued to it.

(4) No license shall be issued to an entity that is using a name containing word(s) identifying a construction or contracting trade, craft, discipline or expertise that is not covered by the classification of license for which the entity is qualified.

(5) In the event a licensee loses its qualifying party, through termination of employment or otherwise, both the licensee and the qualifying party must notify CID or its designee in writing of the separation within thirty (30) days thereof.

(6) CID shall address all written communication with a licensee to its address of record which is the address shown on the application or any different address of which CID has received written notice from the licensee. A licensee shall report in writing to CID or its designee any change of address within thirty (30) days

after such change. Failure to do so is cause for disciplinary action.

(7) For additional information regarding journeyman certification, please see 14.6.4, NMAC.

B. Types of entities.

(1) **Corporations, limited liability companies (LLC) and limited liability partnerships (LLP).**

(a) Corporations, LLCs and LLPs are each required to be licensed even though one or more stockholders, members or partners have a license or qualifying party certificate.

(b) Corporations, LLCs and LLPs must be legally authorized to do business in New Mexico in order to be eligible to apply for, renew or retain a license.

(c) Any license issued to a corporation, LLC or LLP shall automatically cancel when the entity ceases to exist under New Mexico law.

(2) Joint ventures.

(a) No two or more persons shall submit a joint bid or jointly engage in contracting unless operating as a validly licensed joint venture.

(b) To be eligible to apply for, renew or retain a license, each entity comprising the joint venture must hold a valid New Mexico contractor license and be legally authorized to do business in New Mexico.

(c) Any license issued to a joint venture entity shall automatically cancel when the entity ceases to exist under New Mexico law.

(3) Partnerships.

(a) A partnership must be legally authorized to do business in New Mexico in order to be eligible to apply for, renew or retain a license.

(b) Any license issued to a partnership shall automatically cancel when the partnership ceases to exist under New Mexico law.

(4) Sole proprietorships.

(a) A sole proprietorship must be legally authorized to do business in New Mexico in order to be eligible to apply for, renew or retain a license.

(b) On the death of a sole proprietor, the license shall automatically cancel.

C. Proof of financial responsibility.

(1) There is no limit on the number of projects a licensee may undertake as long as each project is within the value limits set by the licensee's proof of financial responsibility as determined under Section 60-13-49 of the act.

(2) A licensee who bids or otherwise undertakes a project that has a value greater than the value established by the financial responsibility level of the license must increase the financial responsibility level before undertaking or continuing work

on such a project. Violation of the financial responsibility limitations on a license is grounds for disciplinary action.

(3) Net worth shall be used to determine the level of responsibility limitation on a license when a financial statement is offered as proof of financial responsibility.

(4) The amount of the surety bond or cash collateral offered as proof of financial responsibility may be increased at any time. A surety bond may be decreased only at the time of license renewal and requires that a rider from the bonding company showing the decrease be submitted with the renewal application. A cash collateral may be decreased only at the time of license renewal by submitting a new assignment from the bank or financial institution with the renewal application. The previous cash collateral assignment shall not be released for a period of six (6) months after the date on which the new assignment becomes effective, or the cancellation of the license, whichever is earlier.

(5) If a bond or cash collateral is cancelled, expires or becomes otherwise ineffective during the life of a valid license, the license will be automatically canceled thirty (30) days after the date CID receives notice of such ineffectiveness. Such a license may be reinstated upon proof of financial responsibility provided to CID or its designee before the license expires for failure to renew.

(6) Nothing in this rule or the act shall require CID to reinstate or renew a license if the cause exists to suspend or revoke the license on other grounds.

D. Application.

(1) Every application for licensure, certification, and all requests for formal action to be taken on a license or certificate, such as renewal or addition of a classification, must be made on the applicable form issued by CID or its designee and accompanied by the applicable fee as required by 14.5.5 NMAC.

(2) An incomplete or insufficient application shall be rejected and returned to the applicant, with a statement of the reason for the rejection.

(3) Examinations.

(a) No applicant for a qualifying party certificate is eligible to take a qualifying examination until documentation establishing satisfaction of the applicable work experience requirement has been received and approved by CID or its designee.

(b) Examinations shall be administered by CID, or its designee, according to a regular schedule, which shall be published.

(c) A passing exam score is 75% or above.

(d) An applicant who fails to

appear for a scheduled exam or fails to attain a passing score of 75% may take another regularly scheduled exam, provided the applicant reapplies to take the exam, pays the fee and does not repeat the exam more than twice in any thirty (30) day period.

(4) All requirements for licensing or certification must be met within six (6) months from the date the application is received by CID or its designee. Any application not completed within the six (6) month period shall expire and any fees paid in connection with the expired application shall automatically forfeit.

(5) If CID or its designee determines that an applicant has cheated, the exam shall be deemed invalid, all fees shall be forfeited, and any license or certificate issued on the basis of that exam shall be automatically and immediately voided. The applicant will not be eligible to take any exam administered by CID, or its designee, for one (1) year after the date of such an event.

E. Qualifying party certificates.

(1) Qualifying party certificates issued by CID:

(a) are issued only to individuals who are eighteen (18) years of age or older;

(b) grant only the authority for the licensee to engage in contracting in the classification specified on the certificate.

(c) are not transferable and may not be used by any individual other than the individual to whom it is issued, and any individual who permits another person to use his certificate, or knows that his certificate is being used by another person and fails to promptly notify CID of such use, shall be subject to disciplinary action, up to and including revocation of the certificate.

(2) Any individual applying for a qualifying party certificate must provide proof of work experience, as required in the act and Title 14, NMAC, in the classification of contracting for which application is made. Training that is classified as technical training by an accredited college, university, manufacturer's accredited training program, technical vocational institute or an accredited apprenticeship program will be considered in lieu of work experience. Each year of equivalent training shall be applied as one-half (1/2) year of experience, but in no case shall accredited training exceed one-half (1/2) of the total work experience requirement.

(3) While validly attached to, and qualifying a license, no qualifying party shall accept or engage in any employment that would conflict with his responsibilities as a qualifying party for, or conflict with his ability to adequately supervise the work performed by, the licensee.

(4) No individual may qualify more than one licensed entity, other than a joint venture, unless there is at least thirty percent (30%) common ownership among the qualified entities. CID may require evidence of such ownership that is satisfactory to the Director.

F. License renewals.

(1) CID or its designee shall mail to every licensee a renewal application form at least thirty (30) days prior to the expiration of the license to the current address of record for that licensee. Whether or not the application form is received, it is the sole duty and responsibility of each licensee to timely renew its license.

(2) The filing date of the renewal application shall be the date the envelope is postmarked or, if hand delivered, the date it is received by CID or its designee.

(3) The signatures of all current qualifying parties on each license must appear on the renewal form.

(4) If a renewal application is not timely received, or if received but is rejected for failure to comply with renewal requirements, the license shall be suspended and subject to cancellation pursuant to Sections 60-13-18 E and F of the act.

G. Change of name.

(1) The licensee must submit a written request for a name change accompanied by:

(a) An amended registration certificate from the New Mexico department of taxation and revenue.

(b) If bonded, a rider from the bonding company; or if covered by a cash collateral, a new assignment document from the issuing financial institution.

(c) If a corporation, LLC or LLP, a copy of the New Mexico certificate of amendment or other document issued by the state showing that the name change has been officially recorded.

(2) A change of name is not effective until approved in writing by CID. Conducting business under the new name prior to CID's written approval may constitute a violation of Section 30-13-23 K of the act.

H. Validity of licenses and certificates.

(1) The following events may cause a license or certificate to be, or to become, invalid:

(a) Failure to renew pursuant to Sections 60-13-18 and 60-13-39 of the act.

(b) Failure to maintain proof of financial responsibility pursuant to Section 60-13-49 of the act.

(c) Failure to comply with workers' compensation laws pursuant to Section 60-13-23 of the act.

(d) Failure to comply with the Parental Responsibilities Act.

(e) Failure of a license to be qualified by a qualifying party certificate.

(f) Loss of authorization to do business in New Mexico.

(g) Death of a sole proprietor.

(f) Revocation or suspension of a license pursuant to Section 60-13-23 of the act.

(g) Revocation or suspension of a certificate pursuant to Section 60-13-24 and 36 of the act.

(2) When a license ceases to be qualified by a qualifying party certificate, the license will be automatically cancelled and the licensee may not bid or commence any new work in that classification. Any bid or new work commenced after a license is cancelled pursuant to this rule shall be considered unlicensed and will subject the licensee to disciplinary action. Work in progress at the time of the cancellation may continue for not more than one hundred twenty (120) days. After one hundred twenty (120) days, any permit that was issued to the licensee for work in the affected classification shall be automatically cancelled, no inspection shall be conducted pursuant to any such cancelled permit, and any work continued or undertaken shall be deemed to be unlicensed activity and will subject the licensee to prosecution pursuant to Section 60-13-52 of the act.

(3) A qualifying party certificate that is not qualifying a valid license will automatically expire as follows:

(a) A new qualifying party certificate that does not qualify a valid license within twelve (12) months from the date on which the exam score was reported to CID, or its designee, shall automatically expire.

(b) A qualifying party who does not qualify a valid license for any consecutive two (2) - year period shall lose his eligibility as a qualifying party and his certificate shall automatically expire. Any individual who wishes to become recertified in the same classification after the expiration of his certificate pursuant to this rule must apply, retest, and pay all applicable fees. The director may waive the exam requirement for an additional twelve (12) months if the applicant submits documentation of work experience indicating technical and business knowledge equivalent to that indicated by exam scores.

(4) Any work in progress at the time a sole proprietor dies or an entity ceases to exist or be authorized to do business, as described in subpart B. of this rule, may continue for not longer than one hundred twenty (120) days provided that CID receives written notice of the death or event that causes the entity to lose its authorization to do business within thirty (30) calendar days thereafter. At the end of the one hundred twenty (120) days, all permits issued to the entity shall be cancelled, no

inspections on such permits shall be performed, and any work performed thereafter by the entity shall be deemed unlicensed activity and may be prosecuted under Section 60-13-52 of the act. If the licensee, or the licensee's representative fails to notify CID as required in this rule, any work performed after the death of the sole proprietor or the termination of the entity's authorization to do business in New Mexico shall constitute unlicensed activity under the act and may be prosecuted by CID.

I. Compliance with Parental Responsibilities Act.

(1) Pursuant to the Parental Responsibilities Act (PRA), any person who fails to come into compliance with all court ordered child support obligations within thirty (30) days after receiving notice of non-compliance from CID will be subject to revocation of all licenses and certificates, pursuant to the due process requirements of the Uniform Licensing Act.

(2) The only proof of compliance with the PRA is a certificate of compliance issued to the license or certificate holder by the human services department (HSD certificate).

(3) If a license or certificate has been suspended or revoked pursuant to the requirements of the PRA and this rule, it shall be re-instated upon receipt by CID of an HSD certificate and payment of any fines, fees or other amounts owing to CID, subject to the following conditions:

(a) If more than ninety (90) days have elapsed since the expiration date of a revoked license, the license shall not be reinstated. The respondent will be required to apply for a new license pursuant to the requirements of the act and these rules; provided, however, that the one (1) year waiting period required by Section 60-13-29 of the act shall not apply.

(b) If more than one hundred eighty (180) days have elapsed since the expiration of a revoked certificate of competence, the certificate shall not be reinstated. The respondent will be required to apply for a new certificate pursuant to the requirements of the act and these rules; provided, however, that the one (1) year waiting period required by Section 60-13-29 of the act shall not apply.

(c) If a more than two (2) years have elapsed since the date of an order revoking a qualifying party certificate, the certificate shall not be reinstated. The respondent will be required to apply for a new certificate pursuant to the act and these rules; provided, however, that the one (1) year waiting period required by Section 60-13-16 of the act shall not apply.

(d) Nothing in this rule or the PRA shall require CID to reinstate a license or certificate if cause exists to suspend or revoke the license or certificate on other

grounds.

[14.6.3.8 NMAC - Rp, 14.6.3.8 NMAC, 2-1-06]

14.6.3.9 PAYMENT OF ADMINISTRATIVE PENALTIES.

A. A person whose license or certificate has been suspended pursuant to Section 60-13-23, 24 or 36 of the act shall not be eligible for reinstatement of the license or certificate until all fees and administrative penalties assessed have been paid in full, except as allowed in subsection C, below.

B. A person whose license or certificate has been revoked pursuant to Section 60-13-23, 24 or 36 of the act shall not be eligible to apply for a new license or certificate until all fees and administrative penalties assessed have been paid in full, except as allowed in subsection C, below.

C. The commission may authorize CID to establish a payment plan for administrative penalties assessed against a licensee. If the licensee demonstrates good faith in making payments, CID may issue a new license or certificate or reinstate a suspended license or certificate before full payment has been made. If a licensee obtains a license or certificate pursuant to this provision, and thereafter fails to remain current on payments, he may be subject to additional disciplinary action, including suspension, revocation of the license or certificate and additional administrative penalties.

D. Nothing in this rule shall enable a person to apply for or be issued a license or certificate if ineligible for licensure under any other provision of the act or Title 14, NMAC.

[14.6.3.9 NMAC - Rp, 14.6.3.9 NMAC, 2-1-06]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

TITLE 14 HOUSING AND CONSTRUCTION CHAPTER 6 CONSTRUCTION INDUSTRIES LICENSING PART 4 JOURNEYMAN CERTIFICATION

14.6.4.1 ISSUING AGENCY.
The Construction Industries Division (CID) of the Regulation and Licensing Department.

[14.6.4.1 NMAC - Rp, 14.6.4.1 NMAC, 2-1-06]

14.6.4.2 SCOPE. This rule applies to individuals seeking journeyman certification in the electrical, mechanical and plumbing trades in New Mexico.
[14.6.4.2 NMAC - Rp, 14.6.4.2 NMAC, 2-1-06]

14.6.4.3 STATUTORY AUTHORITY. NMSA 1978, Section 60-13-33, 36, 38 and 39.
[14.6.4.3 NMAC - Rp, 14.6.4.3 NMAC, 2-1-06]

14.6.4.4 DURATION. Permanent.
[14.6.4.4 NMAC - Rp, 14.6.4.4 NMAC, 2-1-06]

14.6.4.5 EFFECTIVE DATE. February 1, 2006, unless a later date is cited at the end of a section.
[14.6.4.5 NMAC - Rp, 14.6.4.5 NMAC, 2-1-06]

14.6.4.6 OBJECTIVE. The objective of 14.6.4 NMAC is to set forth general provisions governing journeyman certification in the electrical, mechanical and plumbing trades in New Mexico.
[14.6.4.6 NMAC - Rp, 14.6.4.6 NMAC, 2-1-06]

14.6.4.7 DEFINITIONS. [See NMSA 1978, Section 60-13-2.]
[14.6.4.7 NMAC - Rp, 14.6.4.7 NMAC, 2-1-06]

14.6.4.8 JOURNEYMAN CERTIFICATION.

A. General Information.

(1) A journeyman certificate of competence in the appropriate trade classification for the work to be performed is required of all individuals performing electrical wiring, or mechanical and plumbing work; provided however, that an apprentice, as defined in section 60-13-2 of the Act, may work under the direct supervision of a validly certified journeyman, as defined in section 60-13-2 of the Act, who is employed by a validly licensed person, as defined by 60-13-2 of the Act, or a holder of a valid annual permit. Journeyman certifications shall be issued such that the certificates parallel the contractor classifications and scopes.

(2) Journeyman certifications shall be issued such that each certificate parallels the license classification numbers and scopes set forth in 14.6.6 NMAC.

(3) A journeyman certificate of competence is issued to an individual only and is not transferable or assignable.

(4) No individual under the age of eighteen (18) shall be issued a certificate of competence.

(5) A journeyman may engage in the trade authorized by the certificate of competence issued to him/her only when employed by an entity (1) that is validly licensed to perform the type of work for which the journeyman is certified; or, (2) holding valid annual permit authorizing the entity to engage in the type of work for which the journeyman is certified.

(6) For information regarding compliance with the Parental Responsibilities Act, revocations and suspensions and administrative penalties, please see section 14.6.3.8 H. and I. and section 14.6.3.9 of NMAC.

B. Application.

(1) An application submitted for a journeyman certificate of competence shall be on a form approved by CID and shall be accompanied by the prescribed certification fee.

(2) An incomplete or insufficient application shall be rejected and returned to the applicant with a statement of the reason for the rejection.

(3) All requirements for certification must be met within six (6) months after the date the application is received by CID or its designee. Any application not completed within the six (6) month period shall expire and any fees paid in connection with the expired application shall automatically forfeit.

(4) The applicant must submit proof of the required experience with the application on form(s) approved by CID. No applicant shall be eligible to take an examination for a certificate of competence before proof of experience is submitted and approved.

(5) Examination.

(a) No applicant for a journeyman certificate is eligible to take an exam until documentation establishing satisfaction of the applicable work experience requirement has been received and approved by CID or its designee.

(b) Examinations shall be administered by CID or its designee according to a schedule which shall be published.

(c) A passing examination score is seventy percent (75%) or above.

(d) An applicant who fails to appear for a scheduled examination or fails to attain a passing score of at least 75% may take another regularly scheduled exam, provided the applicant reapplies to take the exam, pays the fee, and does not repeat the exam more than twice in any thirty (30) day period.

(e) If CID or its agent has determined that an applicant has cheated, the exam shall be deemed invalid, all fees shall be forfeited, any certificate issued on basis of that examination shall be automatically and immediately voided, and the applicant

will not be eligible to take any examination administered by CID or its designee for one (1) year after the date of such event.

C. Renewal.

(1) CID, or its designee, shall mail to every certificate holder a renewal application form at least thirty (30) days prior to the expiration of such certificate to the certificate holder's current address of record. Whether or not the application is received, it is the sole duty and responsibility of each certificate holder to timely renew his/her certificate. Incomplete or inaccurately completed renewal forms shall be rejected.

(2) No certificate in the journeyman electrician (JE98 or EE98-J) classification will be renewed in the absence of compliance with all continuing education requirements set forth in section D below.

(3) The filing date of the renewal application shall be the date the envelope is postmarked or, if it is hand delivered, the date it is received by CID, or its designee.

(4) If an application for renewal is not timely received or, if it is received but rejected for failure to comply with renewal requirements, the certificate shall be suspended and subject to cancellation pursuant to section 60-13-39 C of the Act.

D. Continuing education requirements.

(1) Section 60-13-38 F of the Act creates a continuing education requirement as a condition for renewal or reinstatement of a journeyman electrician certificate of competence.

(2) Prior to renewal of a journeyman electrician certificate of competence, or reinstatement of such a certificate after revocation, the journeyman certificate holder is required to complete sixteen (16) hours of approved course work.

(3) A minimum of eight (8) hours shall comprise instruction on changes in the currently adopted New Mexico electrical code and national electrical code since the date on which the certificate to be renewed or reinstated was issued, last renewed or reinstated.

(4) Course sponsor(s) must submit to CID an application for course and instructor approval, on a form approved by the division, and must be approved by the commission before the course will qualify as approved course work under this section.

(5) Application for course approval must be received by CID no later than one hundred twenty (120) days before the date of which the course is to begin

(6) Complete and legible course and instructor approval applications shall be reviewed by the electrical bureau chief and the technical advisory council to the electrical bureau no less frequently than once a calendar month. Incomplete or illegible

applications will not be considered and shall be returned to the submitter without approval or denial.

(7) The electrical bureau chief and technical advisory council shall report to the commission at each commission meeting its recommendation for approval or denial on each complete application submitted for approval.

(8) The commission shall receive and consider the recommendations of the electrical bureau chief and the technical advisory council before voting on whether to approve or deny any approval application; provided, however, that the commission may appoint a sub-committee to which it delegates the authority to approve or deny any approval application. If a sub-committee is appointed, it shall receive and consider any recommendation made by the electrical bureau chief and the technical advisory council, and approve or deny approval applications accordingly, no less often than once every sixty (60) days.

(9) Course approval shall be effective for three (3) years from the date of approval, unless the course is not offered for twenty-four (24) consecutive months. Instructor approval shall be effective for three (3) years from the date of approval.

(10) At the expiration of the approval period, the course or instructor will automatically cease to be approved, without further notice from CID. Any application for re-approval must be received no less than one hundred twenty (120) days prior to the date on which the approval period expires in order to avoid a lapse in approval.

(11) The decision of the commission, or its designated sub-committee, regarding the approval or denial of an application is final and is not subject to review.

(12) To qualify as approved course work, continuing education courses must comply with the following standards:

(a) the course content must be relevant to the electrical trade and consistent with the laws and rules of the state of New Mexico;

(b) the course may be conducted in a classroom, seminar or in a home study format; and

(c) the course must be taught by an approved instructor.

(13) To be approved an instructor must either be currently teaching or have taught at least one course related to the electrical trade within the preceding two (2) years in one of the following programs:

(a) an electrical program that is approved by the vocational education division of the state of New Mexico department of public education and offered in the curriculum of a New Mexico trade school, college or university;

(b) a program, the objectives of

which relate to the electrical trade, that is offered through a professional association or organization representing licensed electricians;

(c) an apprenticeship program approved by the state of New Mexico apprenticeship council or the bureau of apprenticeship and training;

(d) a program offered by a nationally recognized testing laboratory, or product manufacturer and the instructor has at least (5) years practical experience in the subject taught;

(e) an organization that provides electrical continuing education unit courses, and the instructor has at least five (5) years of practical experience in the subject taught;

(f) CID electrical bureau code education program.

(14) For each journeyman certificate holder who successfully completes an approved course, the instructor is required to submit to the CID the following:

(a) the name of the certificate holder;

(b) his/her address; and

(c) and journeyman certificate number within thirty (30) days after course completion.

[14.6.4.8 NMAC - Rp, 14.6.4.8 NMAC, 2-1-06]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

TITLE 14 HOUSING AND CONSTRUCTION CHAPTER 6 CONSTRUCTION INDUSTRIES LICENSING PART 6 CLASSIFICATIONS AND SCOPES

14.6.6.1 ISSUING AGENCY:
The Construction Industries Division (CID) of the Regulation and Licensing Department.

[14.6.6.1 NMAC - Rp, 14.6.6.1 NMAC, 2-1-06]

14.6.6.2 SCOPE: This rule applies to any person who engages in contracting, as that term is defined in Section 60-13-3 of the act within the state of New Mexico.

[14.6.6.2 NMAC - Rp, 14.6.6.2 NMAC, 2-1-06]

14.6.6.3 STATUTORY AUTHORITY: NMSA 1978, Sections 60-13-9 A., B. and K.
[14.6.6.3 NMAC - Rp, 14.6.6.3 NMAC, 2-1-06]

14.6.6.4 DURATION:
Permanent.

[14.6.6.4 NMAC - Rp, 14.6.6.4 NMAC, 2-1-06]

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

[14.6.6.5 NMAC - Rp, 14.6.6.5 NMAC, 2-1-06]

14.6.6.6 OBJECTIVE: The objective of 14.6.6 NMAC is to set forth the classifications of licenses and certificates issued by CID.

[14.6.6.6 NMAC - Rp, 14.6.6.6 NMAC, 2-1-06]

14.6.6.7 DEFINITIONS:
[14.6.6.7 NMAC - Rp, 14.6.6.7 NMAC, 2-1-06]
[See Sections 60-13-2 and 3 of the act.]

14.6.6.8 GENERAL INFORMATION

A. Any license issued pursuant to the act and Title 14 NMAC authorizes contracting in the activities covered by the classification(s) of the issued license only. Work performed outside that scope constitutes a violation of the act and these rules and constitutes grounds for disciplinary action.

B. A validly licensed person may bid and contract as the prime contractor of a project only if the major portion of the work, based on dollar amount, is authorized by the classification of the prime contractor's license. Any work outside the scope of the prime contractor's license classification(s) must be subcontracted. This provision is subject to the exception set forth in Subsection A of 14.6.6.9 NMAC, below.

C. Any work subcontracted by a prime contractor must be performed by an entity that is validly licensed in the classification(s) of the work that is to be subcontracted.

D. Any license issued in a classification that is subsequently discontinued, shall be renewed under that classification until the license becomes invalid. When a license issued in a discontinued classification becomes invalid, the entity that held that license will be required to apply for a new license in the appropriate classification in effect at the time of the application in order to be validly licensed to engage in contracting in the state of New Mexico. Such an applicant will be required to satisfy all requirements for licensure as provided in the act and Title 14 NMAC.
[14.6.6.8 NMAC - Rp, 14.6.6.8 NMAC, 2-1-06]

14.6.6.9 GENERAL CONSTRUCTION CLASSIFICATIONS.**A. General information.**

(1) A GB-98 contractor may bid and contract as the prime contractor of a project that involves work authorized by the GB-98 license classification, regardless of the percentage of work in the mechanical/plumbing and/or electrical trades. The work outside the scope of the prime contractor's license classification(s) must be subcontracted to an entity validly licensed in the appropriate classification(s).

(2) A GB-98 contractor may not bid and contract as the prime contractor of an entire project if the major portion of the work to be performed, based on dollar amount, is covered by the scope of any GA or GF classification.

B. Classifications.

(1) **GA Asphalt, bitumen and concrete construction:** Applies to surfaces used by vehicular traffic, not airborne craft.

(a) **GA-1. Streets, roads and highways, including tunnels, parking lots, alleys, seal coat and surfacing.** Requires two years experience. Clear, align, fill, compress, compact, build up or remove earth and do all work necessary to prepare, within the assigned rights-of-way, the land to accept a street, road, highway, including tunnels, parking lots, alleys or driveways, including curbs, gutters, public sidewalks and land fencing. Place and finish concrete and/or bituminous materials and apply seal-coat.

(b) **GA-2. Maintenance and repair.** Requires two years experience. Fix, maintain, repair, patch, mend, cover, fill or replace materials of like substances to that being repaired on streets, roads, highways, parking lots, driveways and alleys. Apply seal coat to driveways and parking lots. Install rumble strips.

(c) **GA-3. Curbs, gutters and culverts.** Requires two years experience. Form, place and finish concrete curbs, gutters, culverts, public sidewalks and bituminous ridge curbs for the deflection of water.

(d) **GA-4. Striping.** Requires two years' experience. Paint directional stripes on paved roads, streets, highways, alleys and parking lots. Install auto parking bumpers or stops and highway lane markers/reflectors.

(e) **GA-5. Highway signs and guard rails.** Requires two years experience. Erect and stabilize signs and guard rails along public highways, streets, roads and alleys, which are used for the direction and safety of vehicular traffic. Electrical signs must be installed by a properly licensed electrical contractor.

(f) **GA-98. Asphalt, bitumen and concrete construction.** Requires licensure in classifications GA-1 through

GA-5, and covers all work authorized in those classifications.

(2) Residential and commercial building.

(a) **GB-2. Residential.** Requires two years experience. Erect, alter, repair or demolish homes, residences and apartment houses accommodating not in excess of four (4) family units, Groups R-1 and R-3, as those groups are defined in 14.7.3 NMAC. May also bid and contract for items included in Group U, as defined in 14.7.3 NMAC, when incidental to these structures. Includes all work described by the GS specialty classifications, provided the work is limited to residential construction as defined under this provision.

(b) **GB-98. General building.** Requires four years experience. Erect, alter, repair or demolish residential and commercial buildings, and certain structures, excluding those structures covered by the EE, GA, GF or MM classifications. Includes all work described by the GB-2 and GS specialty classifications.

(3) **Fixed works.** Authorized to construct, alter or repair fixed works facilities; provided, however, that work in any trade or craft that is authorized by any one, or a combination of, the mechanical, electrical, general building or LP Gas classifications must be performed by an entity validly licensed in the appropriate classification. Except as may be expressly provided in a specific classification description, fixed works classifications may not construct buildings that are primarily for the use and occupancy of the general public, but may bid and contract for such buildings when they are incidental to a fixed works project, pursuant to Subsection B of 14.6.6.8 NMAC, above.

(a) **GF-1. Airports.** Requires two years experience. Construct, alter and repair airports, including marking, excavating, grading, fencing, surfacing and subsurfacing (dirt or bitumen and concrete), compacting and other work on surfaces to be used for aircraft traffic, landing, take-off and taxi

(b) **GF-2. Bridges.** Requires two years experience. Erect, construct, alter, repair or demolish any bridge, overpass or underpass, culvert and ramp, generally used for vehicular traffic.

(c) **GF-3. Canals, reservoirs, irrigation systems.** Requires two years experience. Construct, erect, alter, repair, or demolish canals, reservoirs and/or irrigation systems, including pivot irrigation systems. May excavate, ditch, fill, compact and place pre-cast components, waterproof membranes and liners, concrete reinforcement, abutments and buttresses in connection therewith. May install tanks, pumps, pipe lines and substations incidental to the proj-

ect.

(d) **GF-4. Drainage or flood control systems.** Requires two years experience. Construct, erect, install, repair and alter drainage or flood control systems. May dig, excavate, fill, prepare embankments for such purposes, place pre-cast components, concrete reinforcement and perform all other work incidental to these projects. May install storm sewers, including trenching, boring, shoring, backfilling, compacting, and paving.

(e) **GF-5. Recreation areas.** Requires two years experience. Construct, prepare, clear, repair or alter facilities for use as recreation areas, including but not limited to golf courses, tennis courts, playgrounds, outdoor athletic facilities, miniature golf courses, pitch-and-putt golf courses. May prepare the area by excavation, fill, including foundations, retaining walls, sprinkler systems, rest benches, shade and rain shelters. Also includes public campgrounds and parks, including toilet facilities and lean-tos.

(f) **GF-6. Railroad and tunnel construction.** Requires two years experience. Construct railroad lines, including clearing, filling, shaping, compacting, placing rip-rap, stabilizing, setting roadbeds, ties, tie plates, rails, rail connectors, frogs, switch plates, switches, and all appurtenances necessary for an operational railroad line, including bridges, culverts, tunnels, retaining walls, dikes, fences, gates, tool sheds and landing or parking platforms for equipment. Includes welding operations necessary for rail construction.

(g) **GF-7. Tanks and towers.** Requires two years experience. Fabricate and install tanks for the storage of solids or liquids, above or below ground, and towers such as radio and microwave towers, including all necessary site-work, excavation and the construction of concrete pads and foundations, cutting, welding, placement of structural members, engineered structural support systems for elevated tanks, and engineered or prefabricated towers. Includes the repair, cleaning, and placement of liners in tanks, and incidental fencing and buildings.

(h) **GF-8. Transmission lines, tanks and substations (non-electrical).** Requires two years experience. Build, construct and place lines for the transmission or conveyance of petroleum and other fluid substances, including the application of protective coatings, trenching, boring, shoring, backfilling, compacting, paving and surfacing necessary and incidental to the completion of the installation of such facilities. Includes incidental buildings, tanks, and substations required for the project.

(i) **GF-9. Utility lines (sewage, natural gas and underground telephone**

cables). Requires two years experience. Construct, install, alter or repair utility lines for the transmission of sewage, natural gas and water, including excavating, grading, trenching, boring, shoring, backfilling, compacting, paving and surfacing. Construct, alter, or repair treatment plants and facilities incidental thereto. Install direct burial telephone or data cable and vaults as directed by the telephone utility. May not perform installation of electrical raceways, splicing, termination, installation of load pots, overhead cabling work, or other activities considered under the scope of the ES-7, EL-1 or EE-98 electrical classifications.

(j) GF-98. Construct, alter or repair fixed works facilities. Requires four years experience. Requires licensure in classifications GF-1 through GF-9 and covers all work described in these classifications.

(4) Specialty classifications. General construction includes numerous specialties. Therefore, CID has established the GS classification series to enable entities that perform this kind of work to be licensed in their respective areas of expertise. The most common of these specialties are described below.

(a) GS-1 Acoustical and/or insulation, urethane foam. Requires two years experience. Install any insulating material, including urethane foam and approved waterproof membranes and coatings, in or on buildings, structures and on piping for the purpose of energy conservation, temperature and sound control, and fireproofing. Does not include the installation of urethane roof systems.

(b) GS-2 Awnings and canopies. Requires two years experience. Construct, erect and install awnings and canopies, attached to buildings and structures or free standing, including, but not limited to carports and service station canopies, and including necessary excavation and foundation work. All electrical work shall be performed by a properly licensed electrical contractor.

(c) GS-3 Tile, marble and terrazzo. Requires two years experience. Install tile, marble, granite, cultured stone, and terrazzo, including preparing surfaces and placing material, with or without adhesives, mortar, or sealants.

(d) GS-4. Concrete, cement, walkways and driveways.. Requires two years experience. Mix, pour, place, and finish concrete, including all necessary preparatory work including excavation, form work, and placing of reinforcement materials. May not perform this work in street construction.

(e) GS-5 Demolition. Requires two years experience. Demolish all or any portion of a building and certain structures,

including such demolition to portions of buildings and structures as to permit additions and alterations to the remaining portions of the building and structure.

(f) GS-6 Door installation. Requires two years experience. Install doors in buildings and structures, including the necessary installation of material embracing essential and acceptable door framing, and install hardware necessary to connecting, closing and locking of such doors.

(g) GS-7. Drywall installation and texture. Requires two years experience. Install gypsum wallboard, gypsum sheathing, taping, bedding and coating the surfaces of the wallboard and sheathing with gypsum joint systems, tape and dry-wall mud, or a combination of other materials to create a permanent surface of coating. Includes texturing of walls and ceilings.

(h) GS-8. Earthmoving, excavating and ditching. Requires two years experience. Perform earthwork, using hand or power tools, machines that use air, fluids, or other material under pressure, or heavy equipment, in such a manner that cutting, filling, excavating, grading, trenching, backfilling, boring and any similar excavating activity can be executed. Includes the use of explosives for such purposes and may be subject to certain restrictions.

(i) GS-9. Elevators, escalators, conveyors and related machinery (non-electrical). Requires two years experience. Erect, install or repair elevators, escalators and related machinery, including sheave beams, sheaves, cable and wire rope, guides, cab, counterweights, doors, including sidewalk elevators, automatic and manual controls, signal systems and all other devices, apparatus, machinery and equipment (including fabrication on job site) essential to the safe and efficient installation and operation of electrical, hydraulic and manually operated elevators, escalators and conveyors.

(j) GS-10 Fencing. Requires two years experience. Install fencing including cutting, shaping, fabricating and installing barbed wire, wood or metal fencing, masonry brick or block fence walls, including incidental concrete work and hardware necessary to connecting, closing and locking of gates. May not erect retaining walls.

(k) GS-11 Fixtures, cabinets and millwork. Requires two years experience. Install cabinets and countertops, fixtures that are permanently attached to floors, walls, and ceilings, and perform finish carpentry work, excluding installation of doors and windows.

(l) GS-12 Floor covering, seamless floors and wood floors and finish. Requires two years experience. Install flooring including the work necessary to bring surfaces to a condition where acceptable finished floors can be installed with the

use of composition materials and fabrics and such other materials as are by custom and usage accepted in the building and construction industry as floor covering, excluding tile. Install, finish and repair wood floors and flooring, including the scraping, sanding, filling, staining, shellacking and waxing of such wood floors and flooring. This authorization does not include the installation of carpeting.

(m) GS-13. Framing. Requires two years experience. Cut, join and install wood, and wood and metal products for the framing of a structure or building, including bearing and non-bearing walls, rafters, headers, trusses, joists, studs, door and window rough frames, and roof decks, including repair to any of the above.

(n) GS-14 Glazing, windows, weather stripping, storm door and window installation. Requires two years experience. Fabricate and install windows in buildings and structures, including the necessary installation of material embracing essential and acceptable window framing, and the installation of hardware necessary to connecting, closing and locking of such windows. Cut, assemble and install all makes and kinds of glass work, and execute the glazing of frames, panels, sash and doors. Fabricate and install storm doors and windows. Install weather stripping and caulking.

(o) GS-15 Caissons, piers and pile driving. Requires two years experience. Install piers, caissons and pilings through the use of pile driving equipment and machinery, including necessary excavation, grading and clearing for site preparation for pile driving activities. Cut, weld, join and fabricate caissons or piles. Install all necessary concrete and reinforcing steel within the caissons to create a structural member.

(p) GS-16. Masonry. Requires two years experience. Install or erect brick and other baked clay products, rough cut and dressed stone, artificial stone and precast blocks, structural glass brick or block adobe, laid at random or in courses, with or without mortar, to form masonry walls, including retaining walls, and flatwork including brick and flagstone installed on concrete or sand. Does not include the application of the tile to existing surfaces or the execution, fabrication and erecting of poured cement and concrete, except as a foundation for a wall or surface for flagstone installation.

(q) GS-17 Ornamental iron and welding. Requires two years experience. Install sheet, rolled and cast, brass, bronze, copper, cast iron, wrought iron, stainless steel or any other metal for the architectural treatment and ornamental decoration of buildings and structures, including all necessary welding. Does not include the work

of a GS-29 miscellaneous sheet metal contractor as provided in these classifications. Welding performed at a welding or fabricating establishment, and not installed by employees of the welding establishment, is considered manufacturing and does not require a contractor's license.

(r) GS-18 Painting and decorating. Requires two years experience. Apply wallpaper, paints, pigments, oils, turpentine, japans, driers, thinners, varnishes, shellacs, stains, fillers, waxes and any other vehicles that may be mixed, used and applied to the surfaces of buildings, tanks, structures, monuments and appurtenances thereto. Includes the preparation of surfaces to bring them to a condition such that acceptable work can be executed thereon. Includes the painting portions of the GA-4, striping classification.

(s) GS-21. Roofing. Requires two years experience. Install, alter or repair roof systems on existing roof decks to create a weatherproof and waterproof protective membrane, with or without insulation, using asphalt, pitch, tar, sealants, felt, shakes, shingles, roof tile, slate, urethane or any other approved materials, including the preparatory work necessary to bring such surfaces to a condition where roofing can be installed, sealed or repaired. Includes cutting, shaping, fabricating, and installing of sheet metal such as cornices, flashing, gutters, leaders, rainwater downspouts, pans, prefabricated chimneys, at or near roof lines, metal flues, or doing any part of any combination thereof, which relate to and are incidental to the principal contracting business of installing roofing.

(t) GS-22 Sandblasting. Requires two years experience. Clean or remove paint or other coatings from buildings or structures, by hand or mechanical devices using sand, air, water and other forms of mixed abrasives.

(u) GS-23 Sign construction (non-electrical). Requires two years experience. Fabricate, install and erect signs of wood, steel, plastic or any material, or any combination of materials, which are to be embedded in the earth, in concrete or other base material, or attached to buildings or structures using anchors, attached cables, bars or similar devices and appurtenances. Electrified signs may be installed by contractors holding ES-1 without being classified hereunder.

(v) GS-24. Structural steel erection. Requires two years experience. Fabricate and erect structural steel shapes and plates, of any profile, perimeter or cross-section that may be used as structural members for buildings and structures, including riveting and welding.

(w) GS-25. Swimming pools (non-mechanical/electrical). Requires two

years experience. Construct and repair swimming pools including excavation, installation of reinforcing steel or mesh, application of concrete and special coatings. May not perform any trade or craft which is authorized by any mechanical, electrical or LP Gas classification.

(x) GS-26 Vaults and depositories. Requires two years experience. Install safes, vaults and depositories of any size, shape or form, fabricated with wood, steel, concrete or any other material including the preparation of those areas and specific sections of buildings and structures to house such safes, vaults, depositories. Includes constructing, erecting, or installing buildings or vaults to be used for interring deceased persons.

(y) GS-28 Gunite. Requires two years experience. Install gunite in areas which include, but are not limited to, swimming pools, canals, reservoirs, bank stabilization and open ditch irrigation systems including the application of steel or wire mesh reinforcement.

(z) GS-30. Plastering, stucco and lathing. Requires two years experience. Prepare wall and ceiling surfaces, interior or exterior, with wood, metal lath, wallboard or other properly prepared surfaces which will accept and hold a mixture of sand, plaster (including gypsum plaster), lime and water, or sand and cement with water or any combination of materials to create a permanent surface coating. These coatings may be applied manually or mechanically on surfaces which will support such coating. May install steel stud systems (non-structural), channel iron work and affix lath or any other materials or products, prepared or manufactured to provide a base for such coatings.

(aa) GS-31 Siding. Requires two years experience. Apply siding consisting of slate, gypsum, wood, plastics or other products, including the application of furred up networks on which the siding can be installed. May not install or paint doors or windows.

(bb) GS-32 Miscellaneous sheet metal. Requires two years experience. Fabricate and install sheet metal (galvanized iron) such as cornices, flashing, gutters, leaders, rainwater downspouts, pans, prefabricated chimneys, hoods, skylights and metal flues. May not install HVAC duct systems, vents, grease hoods, or other appurtenances that are authorized by any mechanical classification.

(cc) GS-34 Concrete coring, drilling and slab sawing. Requires two years experience. Coring, boring, drilling, cutting, and sawing concrete, including the removal or demolition of the material. Does not include the installation of wiring or plumbing in such bored, drilled, cut or

sawed concrete.

(5) GS-29 specialties. The GS-29 classification is a sub-category of the specialty classification. It is a miscellaneous classification that is used to identify uncommon specialties on a case-by-case basis. Requires two years experience. [14.6.6.9 NMAC - Rp, 14.6.6.8, 14.6.6.10, & 14.6.6.11 NMAC, 2-1-06]

14.6.6.10 ELECTRICAL CLASSIFICATIONS.

A. General information.

(1) A journeyman certificate of competence in the appropriate trade classification for the work to be performed is required of all individuals performing electrical wiring; provided however, that an apprentice, as defined in Section 60-13-2 of the act, may work under the direct supervision of a validly certified journeyman, as defined in Section 60-13-2 of the act, who is employed by a validly licensed person, as defined in Section 60-13-2 of the act, or a holder of a valid annual permit. Journeyman certifications shall be issued such that the certificates parallel the electrical license classification numbers and scopes.

(2) Conduit installation: All conduit installations within, or on, buildings shall be performed by a contractor holding a EE-98 license, except where ER-1 licensees and journeymen are installing conduit that is incidental to residential wiring. Specialty electrical license holders (ES-1, 2, 3, and 7) shall not install conduit within, or on, buildings.

(3) Electrical contracting defined: The definition of contracting is set forth in Section 60-13-3 of the act, and nothing in this rule shall be construed to conflict with that definition. However, for the purposes of clarity in this rule, contracting is understood to include installations, alterations, repairs, servicing and maintenance involving electrical work.

(4) Electrical customer-owned distribution systems are subject to all adopted codes, standards, and regulations. Customer-owned distribution systems include all (non-utility owned or operated) overhead or underground primary or secondary voltage electrical power line construction, installation, alteration, repairs, and maintenance.

B. License classifications.

(1) Residential and commercial.

(a) EE-98. Residential and commercial electrical. Requires four years experience. Covers all electrical work, including work identified in less comprehensive electrical classifications, premises wiring systems 600 volts, nominal, or less, underground distribution raceway systems

regardless of voltage, and wiring systems and terminations 600 volts, nominal, or less, with the exception of additional work identified under the EL-1 classification. May bid and contract as the prime contractor of an entire project provided the electrical contractor's portion of the contract, based on dollar amount, is the major portion of the contract.

(b) ER-1. Residential electrical wiring. Requires two years experience. One- and two-family dwelling units and multi-family dwellings when all such units are all on the ground floor with no occupancies above or below, as set forth in 14.10.4 NMAC. May not install wiring for commercial use, such as motels, hotels and similar occupancies. May not contract for more than four (4) dwelling units in any single building or structure.

(c) EL-1. Electrical distribution systems, including transmission lines. Requires four years experience. Overhead or underground electrical distribution and transmission lines and associated towers, tower foundations and other supporting structures, trenching and ductwork and substations and terminal facilities. Interior wiring of buildings housing any of the above equipment requires an EE-98 license.

(2) Specialty licenses.

(a) ES-1. Electrical signs and outline lighting. Requires two years experience. Electrical signs and outline lighting, including electrical wiring to connect signs installed where a "sign circuit" has been provided within ten (10) feet, and concrete for the foundation of poles, and build structures for the support of such signs. Outline lighting is an arrangement of incandescent lamps or gaseous tubes to outline and call attention to certain features such as the shape of a building or the decoration of a window and may or may not contribute to the general illumination of an area.

(b) ES-2. Cathodic protection and lightening protection systems. Requires two years experience. Electrically activated systems to prevent galvanic damage to metallic pipelines or structures, usually underground and electrical work involved in the equipment for connection rectifier systems. Also includes lightning protection systems. May not install the service riser, main service or service grounding.

(c) ES-3. Low voltage special systems (under 50 volts). Requires two years experience. Public address or other sound, voice communication systems normally involving low energy signal circuits. Also, electrical burglar and fire alarm systems, computer data systems, one and two family and multifamily dwelling telephone systems and cable TV systems normally involving coaxial cable for the purpose of transmitting R.F. signals and other intelli-

gence by wire and cable. Includes other low voltage specialty systems such as, but not limited to, door and gate operated control circuits, and temperature control circuits. An installer of TVROs (dishes) is not required to have a contractor's license when the installation is in a single-family dwelling and does not require the use of 120 volts for tracking.

(d) ES-7. Telephone communication systems. Requires two years experience. In-plant and out-plant telephone systems, telephone interconnections in public or privately owned buildings, computer data systems and underground cables or aerial supporting structures, trenching, duct work, terminal facilities, repeaters, including the installation of instruments at their terminating locations. Interior wiring of a building housing any of the above equipment requires an EE-98 classification. **Note:** Refer to GF-9 classification for additional underground telephone cable installations. The GF-9 classification does not include electrical raceway installation.

C. Journeyman classifications.

(1) EE-98J. Journeyman residential and commercial electrical. Requires four years experience.

(2) ER-1J. Journeyman residential wiring. Requires two years experience.

(3) EL-1J. Journeyman electrical distribution systems, including transmission lines. Requires four years experience.

(4) ES-1J. Journeyman electrical signs and outline lighting. Requires two years experience.

(5) ES-2J. Journeyman cathodic protection and lightening protection systems. Requires two years experience.

(6) ES-3J. Journeyman sound, intercommunication, electrical alarm systems, and systems 50 volts and under. Requires two years experience.

(7) ES-7J. Journeyman telephone communication systems and telephone interconnect systems. Requires two years experience.

[14.6.6.10 NMAC - Rp, 14.6.6.12 NMAC, 2-1-06]

14.6.6.11 MECHANICAL AND PLUMBING CLASSIFICATIONS.

A. General information.

(1) A journeyman certificate of competence in the appropriate trade classification for the work to be performed is required of all individuals performing mechanical and plumbing work; provided however, that an apprentice, as that term is defined in Section 60-13-2 of the act, may work under the direct supervision of a validly certified journeyman, as that term is defined in Section 60-13-2 of the act, who is

employed by a validly licensed person, as that term is defined in Section 60-13-2 of the act, or a holder of a valid annual permit. Journeyman certifications shall be issued such that the certificates parallel the mechanical and plumbing license classification numbers and scopes.

(2) The definition of contracting is set forth in Section 60-13-3 of the act and nothing in this rule shall be construed to conflict with that definition. However, for the purpose of clarity in this rule, contracting is understood to include installations, alterations, repairs, servicing and maintenance involving plumbing and/or mechanical work.

(3) The definitions of plumbing, fixtures and gas fitting as set forth in Section 60-13-32 of the act should be referenced when reading these classifications.

B. License classifications.

(1) Residential and commercial.

(a) MM-1. Plumbing. Requires four years experience. Install, alter, repair and service plumbing fixtures, and piping, including pneumatic or electric controls and control wiring not greater than 24 volts, concrete supports, and excavating, trenching and backfilling. Includes hot water heating systems not exceeding 30 p.s.i. or 400,00 b.t.u./hour input; piping for fuel, oil and gasoline and for solar energy systems; septic tanks, manholes and sewer lines; irrigation sprinkler systems; swimming pools and spas ;. Does not include installation of natural gas fired appliances or natural gas piping.

(b) MM-2. Natural gas fitting. Requires four years experience. Install, alter, repair and service natural gas piping and fittings and incidental controls and control wiring, pneumatic control systems, excavating, trenching and backfilling. Includes installation of hot water systems exceeding 30 p.s.i. or 400,000 b.t.u./hour input; steam and hot water boilers; and warm air heating systems such as chimney connections, flues, refractories, burners, fittings valves, thermal insulation, accessories and incidental piping; warm air appliances and other listed gas appliances. May not install LP Gas systems.

(c) MM-3. Heating, ventilation & air conditioning (HVAC). Requires four years experience. Install, alter, repair and service HVAC air handling and refrigeration equipment and piping, including fans, coils, condensing units, self-contained packaged air conditioning and/or heating units, evaporative cooling units, solar energy systems, ductwork and pneumatic tube systems. May connect water to existing valved outlets, and install controls, and control wiring not to exceed 24 volts. May bid and contract for structural alterations, painting, electrical wiring and other work inci-

dental to this scope of work, provided such work is performed by a properly licensed contractor.

(d) MM-4. Heating, cooling and process piping. Requires four years experience. Install, alter, repair and service hydronic heating, cooling and process piping for steam hot water systems of any temperature pressure range, chilled water systems, condensing water systems and process piping systems. Includes pressure vessels, heat exchangers, boilers, refrigeration water chillers, cooling towers, fuel oil tanks and fuel oil piping, and pneumatic or electric controls and control wiring not to exceed 24 volts. Install high pressure and process piping solar energy systems of any temperature or any pressure conveying gas or fluids other than potable water, and pneumatic tube systems.

(e) MM-98 Mechanical. Requires four years experience. Requires licensure in classifications MM-1 through MM-4 and covers all work described in these classifications.

(2) Specialty classifications:

(a) MS-3 Septic tanks & sewer. Requires two years experience. Install, alter, repair or service septic tanks and systems, manholes and sewer lines, starting at a point five (5) feet beyond the outside wall of a building and ending at a connection to a public or private utility. May excavate, trench, backfill and grade as necessary, and install or repair plug-in type electrical control panels, controls and control wiring not to exceed 24 volts.

(b) MS-6. Lawn sprinklers. Requires two years experience. Install, alter, repair or service sprinkler systems which are connected to a potable water supply. May excavate and backfill as necessary and install or repair plug-in type electrical control panels, controls and control wiring not to exceed 24 volts.

(c) MS-12. Fire protection sprinkler systems. Requires four years experience. Install alter, repair or service fire protection systems using water, including any pressure or storage tanks required, controls and control wiring up to 24 volts. May excavate and backfill and install piping from structure to off-premise water supply adjacent to property involving a fire protection system. May bid or contract for structural alterations, painting, electrical wiring, etc., incidental to the system installation, provided such work is performed by a properly licensed contractor.

(d) MS-14. Dry chemical fire protection. Requires four years experience. Install, alter, repair or service fire protection systems using gas or chemical, including CO, halon. Includes pressurized storage tanks, valves, temperature sensing devices and other incidental control wiring up to 24

volts. May install solenoid or shut-off valve devices in these systems. May bid or contract for structural alterations, painting, electrical wiring, etc., incidental to the system installation, provided such work is performed by a properly licensed contractor.

C. Journeyman classifications. Requires two years experience.

(1) JP. Journeyman plumber.

(2) JPF. Journeyman pipe fitter.

(3) JG. Journeyman natural gas fitter.

(4) JPG. Journeyman plumber and natural gas fitter.

(5) JR. Journeyman refrigeration. Must demonstrate compliance with EPA Recovery requirements before certificate may be issued.

(6) JS. Journeyman sprinkler.

(7) JSM. Journeyman sheet metal.

(8) JW. Journeyman welder. Must obtain either a JP or JG or JPG or JSM certification and show ASME Section 9 certification. Is not required to test separately for this certificate of competence.

(9) JMG Journeyman Medical Gas Installer. Must obtain either JP, JG, JPG or JPF certification and show approved medical gas certification as referenced in Title 14, Chapter 9, Part 5.

(10) BO1. Journeyman boiler operator. Low pressure only.

(11) BO2. Journeyman boiler operator. Low and high pressure.
[14.6.6.11 NMAC - Rp, 14.6.6.14 NMAC, 2-1-06]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

TITLE 14 HOUSING AND CONSTRUCTION CHAPTER 7 BUILDING CODES GENERAL PART 8 2003 NEW MEXICO HISTORIC EARTHEN BUILDINGS

14.7.8.1 ISSUING AGENCY: Construction Industries Division of the Regulation and Licensing Department.
[14.7.8.1 NMAC - N, 2-1-06]

14.7.8.2 SCOPE: This rule applies to all historic earthen buildings contracting work performed in New Mexico on or after February 1, 2006, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.
[14.7.8.2 NMAC - N, 2-1-06]

14.7.8.3 STATUTORY AUTHORITY: NMSA 1978 Section 60-13-9 and 60-13-44.
[14.7.8.3 NMAC - N, 2-1-06]

14.7.8.4 DURATION: Permanent.
[14.7.8.4 NMAC - N, 2-1-06]

14.7.8.5 EFFECTIVE DATE: February 1, 2006, unless a later date is cited at the end of a section.
[14.7.8.5 NMAC - N, 2-1-06]

14.7.8.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for historic earthen buildings in New Mexico.
[14.7.8.6 NMAC - N, 2-1-06]

14.7.8.7 DEFINITIONS:
A. Alteration. As used in this chapter, alteration applies to those changes necessary to return a historic earthen building to a documented or physically evidenced historic condition. Alterations that are not necessary to return a building to a documented historic condition or that involve more than 50 percent of the aggregate area of the building shall comply with the applicable provisions of the New Mexico Existing Building Code.

B. Dangerous. Any building or structure or any individual member with any of the structural conditions or defects described below shall be deemed dangerous:

(1) The stress in a member or portion thereof due to all factored dead and live loads is more than one and one third the nominal strength allowed in the applicable New Mexico building code for new buildings of similar structure purpose, or location.

(2) Any portion, member, or appurtenance likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons.

(3) Any portion of a building, or any member, appurtenance, or ornamentation on the exterior, is not of sufficient strength or stability, or is not anchored, attached, or fastened in place, so as to be capable of resisting a wind pressure of two thirds of that specified in the applicable New Mexico building code for new buildings of similar structure, purpose, or location without exceeding the nominal strength permitted in the applicable New Mexico building code for such buildings.

(4) The building, or any portion of the building, is likely to collapse partially or completely because of dilapidation, deterioration, or decay; the removal, movement, or instability of any portion of the ground necessary for the purpose of sup-

porting such building; the deterioration, decay, or inadequacy of its foundation; damage due to fire, earthquake, wind, or flood; or any other similar cause.

(5) The exterior wall or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.

C. Qualified Historic Earthen Building. Any earthen building or structure that is (1) listed in the *national register of historic places* or the *state register of cultural properties*; (2) designated as a historic building or structure by a state or local register, inventory, or survey; (3) certified as a contributing resource within a national or state register listed, or locally designated historic district; or (4) a building or structure that is certified, in writing by the state historic preservation office, as being eligible for listing in the *national register of historic places* or the *state register of cultural properties* either individually or as a contributing building to a historic district.

D. Registered Design Professional. An architect or an engineer registered or licensed in the state of New Mexico.

E. Repair. Renewal, renovation, or rehabilitation of an existing building or structure for the purpose of its continued use.

[14.7.8.7 NMAC - N, 2-1-06]

14.7.8.8 ENERGY CONSERVATION:

A. General. Historic earthen buildings undergoing repairs, alterations, or change of occupancy are not required to comply with the New Mexico Energy Conservation Code.

B.
[14.7.8.8 NMAC - N, 2-1-06]

14.7.8.9 ROOF DRAINAGE AND MOISTURE CONTENT OF WALLS:

A. General. Historic earthen buildings undergoing repairs, alterations, or change of occupancy shall comply with this section.

B. Report. The roof drainage and the moisture content of the walls of a historic earthen building undergoing repair, alteration, or change of occupancy shall be investigated and evaluated in a written report that shall be filed with the code official. The report shall identify where the roof drainage system is deficient and what actions are necessary to correct those deficiencies. When deemed necessary by the code official, such report shall be prepared by a registered design professional.

[14.7.8.9 NMAC - N, 2-1-06]

14.7.8.10 REPAIRS:

A. General. Repairs to any portion of a historic earthen building shall be permitted with original or like materials and original methods of construction, subject to the provisions of this chapter.

B. Dangerous buildings. When a historic earthen building is determined to be dangerous, as defined herein, no work shall be required except as necessary to correct the identified unsafe condition(s).

C. Replacement. Replacement of existing or missing features using original materials shall be permitted. Partial replacement for repairs that match the original in configuration, height, and size shall be permitted. Such replacements shall not be required to meet the materials and methods requirements for new construction.

D. Replacement glazing. Replacement glazing in hazardous locations shall comply with the safety glazing requirements of Chapter 24 of the New Mexico Commercial Building Code or Section R308 of the New Mexico Residential Building Code.

E. Exterior and interior finishes. The use of historic exterior or interior finishes may be continued provided that the materials and their methods of application are specified in a report or plan and presented to the code official. When deemed necessary by the code official, such report or plan shall be prepared by a registered design professional.

[14.7.8.10 NMAC - N, 2-1-06]

14.7.8.11 ALTERATIONS:

General. In addition to the provisions of this chapter, alterations to a historic earthen building shall comply with Sections 1003 and 1004 of the New Mexico Existing Building Code.

[14.7.8.11 NMAC - N, 2-1-06]

14.7.8.12 CHANGE OF OCCUPANCY:

General. In addition to the provisions of this chapter, historic earthen buildings undergoing a change of occupancy shall comply with Sections 1001.2, 1003, and 1005 of the 2003 New Mexico Existing Building Code.

[14.7.8.12 NMAC - N, 2-1-06]

14.7.8.13 STRUCTURAL:

A. General. Historic earthen buildings undergoing repairs, alterations, or a change of occupancy shall comply with the applicable provisions of this section.

B. Intent. It is the intent of this section to preserve the integrity of qualified historic earthen buildings while providing a reasonable level of safety for

the building users.

C. Report. The structural condition of a historic earthen building undergoing repairs, alterations, or change of occupancy shall be investigated and evaluated in a written report that shall be filed with the code official. When deemed necessary by the code official, the report shall be prepared by a registered design professional.

D. Unsafe structural elements. Where it is determined that a component or a portion of a building or structure is dangerous, as defined herein, and is in need of repair, strengthening, or replacement, only that specific component or portion shall be required to be repaired, strengthened, or replaced.

E. Reduction of strength. Alterations shall not reduce the structural strength or stability of the building, structure, or any member thereof.

F. Repairs and alterations. Where the report finds that the majority of the existing building is in sound structural condition and capable of supporting the use for which it is intended, structural repairs and alterations shall be permitted with original or like materials and original methods of construction, subject to the provisions of this section.

G. Roofs. Earthen roofs may be repaired and their use continued where the structural report indicates that the supporting structure will adequately support the earthen material load and any additional materials introduced for repair to the earthen roof. A plan specifying materials used to repair an earthen roof and the method of application of such materials shall be prepared by a registered design professional and presented to the code official. **Exception.** Subject to the approval of the code official, the requirement for a plan prepared by a registered design professional may be waived for minor repairs where the structural report indicates adequate support and where the repairs continue the use of the existing historic material and construction details, and where any drainage deficiencies have been corrected.

H. Bond beams.

(1) When a wall is being replaced or is in need of substantial repair, and the existing building has no bond beam, provisions shall be made for adequately distributing any concentrated loads from the roof structure into the wall. When deemed necessary by the code official, such provisions shall be detailed by a registered design professional.

(2) Where the original roof structure is removed from more than 50 percent of the aggregate area of the building, a continuous bond beam shall be provided in accordance with the requirements of this code for new construction.

I. Walls. Walls that are being reconstructed or replaced shall be constructed in accordance with the maximum height-to-thickness ratios specified in Table A1-g of the 2003 New Mexico Existing Building Code. Minor repairs and infills may be constructed in a manner similar to the original walls without conforming to the requirements of Table A1-G.

J. Foundations. Foundations constructed of historic materials may be repaired and their use continued when a design prepared by a registered design professional is provided to the code official and any deficiencies in the roof drainage system have been corrected. **Exception.** Subject to the approval of the code official, the requirement for a design prepared by a registered design professional may be waived for minor repairs to otherwise sound foundations.

K. Change of occupancy. A change of occupancy to a historic earthen building shall be allowed to comply with the provisions of this section for repairs and alterations subject to the conditions listed below. A change of occupancy not meeting these conditions shall comply with the New Mexico Existing Building Code.

(1) The calculated occupant load of the new use does not exceed 299.

(2) The change of occupancy does not result in the building being placed in a higher seismic, wind, or snow importance category based upon Table 1604.5 of the 2003 New Mexico Commercial Building Code.

(3) The change of occupancy does not result in an increase of more than 5 percent in uniform or concentrated loads based on Tables 1607.1 and 1607.6 of the 2003 New Mexico Commercial Building Code. **Exception.** The code official is authorized to accept existing floors and approve operational controls that limit the live loads on such floors.

[14.7.8.13 NMAC - N, 2-1-06]

HISTORY OF 14.7.8 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

Other History:

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 15 OIL AND GAS**

**PART 40 NEW MEXICO
LIQUIFIED PETROLEUM GAS STAND-
DARD**

19.15.40.1 ISSUING AGENCY: The Construction Industries Division of the Regulation and Licensing Department.
[19.15.40.1 NMAC - Rp, 19.15.40.1 NMAC, 2-1-06]

19.15.40.2 SCOPE:

A. All individuals or persons performing work that will involve the use of storage or providing service, for LP Gas and all facilities, equipment, appliances, structures or installations in the state of New Mexico.

B. The provisions of these rules and regulations shall apply to the use and enforcement of the LP and CNG Gas Act, construction industries division rules and regulations, national publications that are law in New Mexico (such as NFPA 58), and codes adopted by the construction industries commission.

C. It also serves to establish administrative procedures for the LP gas bureau, including, but not limited to, licensing and permitting procedures.
[19.15.40.2 NMAC - Rp, 19.15.40.2 NMAC, 2-1-06]

**19.15.40.3 S T A T U T O R Y
AUTHORITY:** These rules and regulations are adopted pursuant to Section 70, Article 5 NMSA 1978 and Section 60-13-9 (F) NMSA 1978.

[19.15.40.3 NMAC - Rp, 19.15.40.3 NMAC, 2-1-06]

19.15.40.4 D U R A T I O N : Permanent; until later amended, repealed or replaced.

[19.15.40.4 NMAC - Rp, 19.15.40.4 NMAC, 2-1-06]

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

[19.15.40.5 NMAC - Rp, 19.15.40.5 NMAC, 2-1-06]

19.15.40.6 OBJECTIVE: The objective of 19.15.40 NMAC is to promote the general welfare of the people of New Mexico by providing for the protection of life and property through standards that, when complied with, will result in safer installations, equipment, facilities, appliances, structures, and service.

[19.15.40.6 NMAC - Rp, 19.15.40.6 NMAC, 2-1-06]

19.15.40.7 DEFINITIONS:

A. "Accessible" means having access to; may require the removal

of a panel, door or similar covering of the item described.

B. "Approved" means acceptable to the authority having jurisdiction.

C. "Authority having jurisdiction" means the New Mexico LP gas bureau.

D. "Bulk plant" means storage facilities for liquid LP gas awaiting transfer.

E. "Bureau" means the liquefied petroleum and compressed gas bureau of the division.

F. "Certified" means "listed" or "labeled".

G. "Certificate of competence" means a written certificate issued by the LP gas bureau to an LP gas installer based on evidence of competence.

H. "Clearance" means the distance between the appliance, chimney, vent chimney or vent connector, or plenum and the nearest surface.

I. "Code" means NFPA 52, NFPA 54, NFPA 57, NFPA 58 and NFPA 1192 and other codebooks adopted as amended by the commission.

J. "Commission" means the construction industries commission.

K. "Compressed natural gases" and **"CNG"** means mixtures of hydrocarbon gases and vapors consisting principally of methane in gaseous form, which has been compressed for vehicular fuel.

L. "Concealed LP gas piping" means all LP gas piping and fittings which, when in place in the finished building, would require removal of permanent construction to gain access to the piping.

M. "Connector, gas appliance" means a connector, used to convey fuel gas three feet or less in length (six feet or less for gas ranges), between a gas shut off valve and gas appliance in the same room.

N. "Consumer's LP gas system" means any arrangement of LP gas piping, extending from the point of delivery to and including all outlets, appliances and appurtenances, installed under the provisions of the code, which the consumer is responsible to maintain in a serviceable condition, exclusive of piping, tanks, regulators, valves, fittings, etc. owned by the gas company.

O. "Distributing plant" means a facility with the primary purpose of distribution of LP gas, which receives LP gas in tank car, truck transport or truck lots, and distributes such LP gas to end-users by delivery tank truck or through gas piping; such plants have bulk storage of 2,000 gallons water capacity or more, and usually

have container-filling and truck-loading facilities on the premises.

P. "Distributing point" means a facility other than a distributing plant which normally receives gas by tank truck and which fills small containers or the engine fuel tank of motor vehicles on the premises. (An LP gas service station is one type of distributing point).

Q. "Division" means the construction industries division of the regulation and licensing department.

R. "Energy efficient water heater" means any LP gas automatic storage water heater that meets or exceeds ASHREA 90-75 standards for energy efficiency.

S. "Fuel gas piping system" means the arrangement of piping, tubing, fittings, connectors, valves and devices designed and intended to supply or control the flow of fuel gas to the appliances.

T. "Gas company" means any LP gas company or LP gas distributor.

U. "Gas supply connection" means the terminal end or connection to which a gas supply connector is attached.

V. "Gas supply connector" means tubing or piping connecting the mobile home to the gas supply source.

W. "Gas vents" means factory-built vent piping and vent fittings listed by an approved testing agency, that are assembled and used in accordance with the terms of their listings, for conveying flue gases to the outside atmosphere.

X. "Heat producing appliance" means all heating and cooking appliances and all fuel burning appliances.

Y. "Heating appliance" means an appliance for comfort heating or for water heating of a manufactured home.

Z. "House piping" means the LP gas piping from the point where it enters the building or foundation, up to and including the outlets.

AA. "Input rating" means the LP gas-burning capacity of an appliance in BTU's per hour as specified by the manufacturer.

BB. "Inspector" means a person hired by the bureau to enforce under administrative direction the laws and safety rules and regulations of the LP gas industry and the enforcement of the codes used in CNG, LNG and LCNG in motor vehicles.

CC. "Labeled" means equipment or materials to which has been attached a label, symbol or other identifying mark of an organization acceptable to the "authority having jurisdiction" and concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials and by whose labeling the manufacturer indicate compliance with appropriate standards or performance in specified manner.

DD. "Liquefied natural gases", "liquefied compressed natural gases", "LNG" and "LCNG" means a fluid in the liquid state composed predominantly of methane and that can contain minor quantities of ethane, propane, nitrogen, or other components normally found in natural gas.

EE. "Liquefied petroleum gases", "LPG" and "LP gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of them: propane, propylene, butane (normal butane or ISO-butane) and butylenes.

FF. "Liquid transfer" means the transfer of LP gas in a liquid form from an approved container into another approved container.

GG. "Liquid withdrawal" means an approved LP gas container designed for the withdrawal of LP gas for utilization in an approved means.

HH. "Listed" means equipment or materials included in a list published by an organization acceptable to the authority having jurisdiction and concerned with product evaluation that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

II. "LP gas installation" means the installation of materials, fixtures, appliances or equipment that utilize LP gas, which is installed by a licensee of the LP gas bureau.

JJ. "Manufactured homes" means a movable or portable housing structure over thirty-two feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one integral unit, as well as a single unit. Manufactured homes do not include recreational vehicles or modular or pre-manufactured homes, built to building code standards, designed to be permanently affixed to real property.

KK. "Manufactured home site" means a designated portion of a mobile home park designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

LL. "Manufactured home park" means a parcel (or contiguous parcels) of land which has been so designated and improved so that it contains two or

more manufactured home sites available to the general public for the placement thereon of manufactured homes for occupancy.

MM. "Outlet" means a threaded connection or bolted flange in a pipe system to which an LP gas-burning appliance is or may be attached; such outlet must be located in the room or space where the appliance is or may be installed.

NN. "Point of delivery" means the initial junction of the consumer's gas piping with the gas company's piping, at the outlet side of the first regulator, regardless of whether it is a single-stage regulator system or the first stage regulator of a two-stage regulator system.

OO. "Product" or "products" of liquefied petroleum gases, compressed natural gases or liquefied natural gas are considered to be liquefied petroleum gases or compressed natural gases or liquefied natural gases respectively.

PP. "Qualified instructor" means an employee who has passed the required examination and performed for at least one year the work being taught.

QQ. "Readily accessible" means having direct access without the necessity of removing any panel, door or similar obstruction.

RR. "Regulator" means a device for controlling and maintaining a uniform pressure to the manifold of gas equipment.

SS. "Riser" means that portion of the yardline, which protrudes through the grade level of the ground.

TT. "Roof jack" that portion of venting system, including the cap, insulating means, flashing and ceiling plate, located in and above the roof.

UU. "Sealed combustion/direct vent system appliance", "direct vent system appliance" means an appliance which by its inherent design is constructed so that all air supplied for combustion to the combustion system of the appliance, and all products of combustion are completely isolated from the atmosphere of the space in which it is installed, and all flue gases are discharged to the outside.

VV. "Yardline" means a buried line servicing utilities from the on-site utility terminal to the manufactured home.

[19.15.40.7 NMAC - Rp, 19.15.40.7 NMAC, 2-1-06]

19.15.40.8 RETROACTIVITY: The provisions of the codes are not intended to prevent the use of any material, method of construction, or installation procedure not specifically prescribed by the codes, provided any such use is preapproved, in writing, by the LP gas bureau. The provisions of the codes are considered

necessary to provide a reasonable level of protection from loss of life and property. Unless otherwise stated, the provisions of the codes shall not be applied retroactively to existing facilities, equipment, appliances, structures, or systems that were in compliance with the provisions of the codes in effect at the time of installation, or approved for construction or installation prior to the effective date of the document, except in those cases where it is determined, in writing, by the LP gas bureau that the existing situation involves a distinct hazard to life or adjacent property. Equipment and appliances include stocks in manufacturers' storage, distribution warehouses, and dealers' storage and showrooms in compliance with the provisions of the codes in effect at the time of manufacture.

[19.15.40.8 NMAC - Rp, 19.15.40.8 NMAC, 2-1-06]

19.15.40.9 EXAMINATION: No licensee or employee of a licensee shall install or modify any appliance or piping system until he has proved his knowledge of acceptable minimum standards by passing an examination required by the bureau.

A. All personnel whose duties require that they transport or dispense LP gas shall prove by passing an examination, as required by the bureau, that they are familiar with minimum safety standards and practices with regard to handling of LP gas. LP gas may not be dispensed by any person who has not passed the examination by the bureau.

B. An identification card shall be issued to each person who passes the examination required by the LP gas bureau. The identification card shall contain pertinent information such as examinee's name, address and classification(s) for which examinee is certified, and may also provide space for listing violations of the LP gas Act.

C. No licensee or employee shall perform the work he has examined for until he has received an identification card for that classification from the bureau.

D. An identification card shall only be valid while employed by a licensee. The identification card shall be renewed annually with payment of a reasonable fee to the bureau on the anniversary date of the employer's license. The renewal fee shall be paid with the licensee's renewal for all listed qualifying parties.

E. An identification card holder not employed by a licensee for a period of two (2) years shall retest before being qualified.

[19.15.40.9 NMAC - Rp, 19.15.40.9 NMAC, 2-1-06]

19.15.40.10 ANNUAL INSPEC-

TIONS:

A. There shall be an annual safety inspection, made by an inspector of the bureau, of each bulk storage plant facility, dispensing station, vehicle fuel dispenser, and cargo container and safety equipment on each vehicular unit used for transportation of LP gas in bulk quantities. Each bulk plant, dispenser, and vehicular unit shall display a current decal showing it has passed the required inspection.

B. Own use non-resale dispensers shall not require annual inspection. These facilities shall be inspected at the time of installation or modification. [19.15.40.10 NMAC - Rp, 19.15.40.10 NMAC, 2-1-06]

19.15.40.11 LP GAS PLANS AND SPECIFICATIONS:

A. Before equipment for the transfer of liquid LP gas may be installed, plans and specifications of the proposed installation must be submitted in TRIPLICATE to the bureau for approval. Written approval must be received before the equipment is installed.

B. Plans for proposed location of retail cylinder exchange shall be submitted to the LP gas bureau. Written approval must be received before the equipment is installed.

[19.15.40.11 NMAC - Rp, 19.15.40.11 NMAC, 2-1-06]

19.15.40.12 INSURANCE

A. Licensees holding LP gas classifications LP-1, LP-3S, LP-4, LP-5, LP-6, LP-10, CNG-1 and LNG-1 with only vehicles of 3,500 gallons water capacity or less shall have combined single-limit public liability insurance or a corporate surety bond in at least the minimum of \$500,000.

B. Licensees holding LP gas classification LP-7 or LP-9 shall have combined single-limit public liability insurance or a corporate surety bond in at least the minimum amount of \$100,000.

[19.15.40.12 NMAC - Rp, 19.15.40.12 NMAC, 2-1-06]

19.15.40.13 LP GAS MISCELLANEOUS:

A. Any accident/incident where LP gas in any form or any application may have been a factor or could become a contributing factor shall be reported immediately to the LP gas bureau. Likewise, any accident/incident where any CNG or LNG-powered vehicle may have been a factor or could become a contributing factor shall be reported immediately to the LP gas bureau.

B. In all cases where a disconnection is made, a notice shall be given to the consumer by the inspector. Such

notice shall state that the same has been disconnected by, or on order of, the inspector, together with the reasons therefor. It shall be unlawful for any person other than a licensed installer to reconnect or use any segment of the installation without authorization of an inspector.

C. No delivery of LP gas shall be made into any transportation unit or bulk plant after notice that either the current decal or the license has been suspended or revoked, or the license has expired.

D. The bureau will make available to the industry a compliant form to be used to report any violation of the LP Gas Act, rules and regulations or code. This form shall be submitted to the bureau, at which time the bureau will investigate and furnish a written report back to the complainant with twenty (20) working days, with violations found and action taken.

[19.15.40.13 NMAC - Rp, 19.15.40.13 NMAC, 2-1-06]

19.15.40.14 PRINTED FORMS, AND FEES:

A. Printed forms as prescribed by the Division shall be used for application for license, licenses, receipts, approvals, disapproval's, installation records, inspection reports and any other purposes for which the bureau may consider standardized forms necessary for expediency.

B. An administrative penalty may be assessed to anyone found to be making intentional false reports or for failure to file any written report or form as required by law.

C. Printed forms listed below by number or name are hereby adopted and their use for the purpose stated.

(1) FORM 1. Records of Installation, Test or Modification. \$20.00. To be used to record the following.

(a) installation of LP gas containers. Containers of 239#WC or less shall be exempt from this requirement.

(b) installation of piping and appliances. Form 1 shall be prepared at time work is performed and held at licensee's location until called for by bureau inspector.

(2) Retail Cylinder Exchange Installation Registration Form. \$20.00. Fee shall be submitted with required plans for proposed location of retail cylinder exchange installation. Reinspection of cylinder exchange installations \$20.00

(3) LP Gas Installations at Special Events Registration Form. \$15.00. To be used for installations at special events with containers of 239#WC or less.

(4) LP Gas Visual Cargo Tank and Equipment Inspection Form. \$45.00.

(a) (Shall not be assessed more

than one time in each 12 month period).

(b) Re-inspection of cargo tank and equipment and additional charge for re-inspection. \$45.00.

(c) Licensee must obtain form prior to inspection of vehicle or placing a new vehicle in service. Bureau inspector will complete form upon inspection. Corrections after inspection will require a correction form and may require re-inspection. To expedite inspections, vehicle licensee will be notified by the LP gas bureau that vehicle annual inspection is due during the first month of the inspection quarter.

(5) Plant/Dispenser Inspection Form. \$45.00.

(a) (Shall not be assessed more than one time in each 12 month period).

(b) Re-inspection of bulk storage and additional charge for re-inspection. \$45.00.

(c) Licensee must obtain form prior to inspection of plant or placing a new dispenser in service. LP gas bureau inspector will complete form upon inspection. Corrections after inspection will require a correction form and may require re-inspection. To expedite inspections, dispenser licensee will be notified by the bureau that dispenser annual inspection is due during the first month of the inspection quarter.

(6) Correction Inspection Form. LP gas bureau inspector will issue form when correction is needed and note the code, statute or rule and regulation section number that was in violation. bureau inspector may lock and seal filler valve until correction is completed. After correction, licensee will sign correction form, attach appropriate new inspection form (listed above), and return forms, seal and filler valve lock to inspector for re-inspection.

(7) Certificate of Insurance. To be submitted by all licensees to the LP gas bureau.

(8) Form 1 first re-inspection fee shall be \$20.00.

(9) Form 1 second re-inspection fee shall be \$75.00.

[19.15.40.14 NMAC - Rp, 19.15.40.14 NMAC, 2-1-06]

19.15.40.15 LICENSE CLASSIFICATIONS, SCOPES AND FEES: License classifications are defined and annual license fees are set as follows.

A. LP-1 wholesale sale or delivery of LP gas \$125.00. A licensee under this classification is authorized to wholesale, transport and/or deliver LP gas in vehicular units into or out of any location except that of an ultimate consumer. This classification will allow delivery to the ultimate consumer whose facilities require a bulkhead.

B. LP-3S retail sale of LP

gas \$65.00. A licensee under this classification is authorized to deliver, transfer and transport LP gas in a liquid state to the ultimate consumer, both intrastate and interstate. The company employing the LP-3S licensee must also hold an LP-5 license in order to hold a LP-3S license. A person holding this classification is authorized to perform all work as described in classifications LP-1 and LP-9.

C. LP-4 limited installation, service and repair \$125.00. A licensee under this classification is authorized to install, service and repair appliances, equipment, and piping for use with LP gas in residences and commercial buildings except mobile homes (as defined by the Manufactured Housing Act) recreational vehicles and similar units. The scope of the work for the LP piping is from (point of delivery) to the final connection of the appliances. In order to qualify for this classification, a licensee must hold mechanical license classification MM2 or MM98.

D. LP-5 installation, service and repair \$125.00. A licensee under this classification is authorized to install or erect liquid transfer facilities; and to install, service and repair appliances, equipment and piping for use with LP gas in residences and commercial buildings including mobile homes (as defined by the Manufactured Housing Act), recreational vehicles and similar units. The scope of the work for the LP gas appliances in this classification does not include the HVAC ductwork or hydronic piping systems connected to any appliance. Those specialties fall under the mechanical license classifications.

E. LP-6 installation, service and repair of mobile units only \$75.00. A licensee under this classification is authorized to install, service and repair LP gas appliances, equipment and piping in manufactured housing, travel trailers, recreational vehicles, campers and similar units.

F. LP-7 wholesale or manufacture of appliances, equipment or containers \$50.00. A licensee under this classification is authorized to wholesale or manufacture appliances, equipment or containers for use with LP gas.

G. LP-9 station for dispensing LP gas \$35.00. A licensee under this classification is authorized to dispense LP gas into fuel containers on vehicles or to fill and/or deliver portable containers (maximum water capacity 239#).

H. LP-10 LP gas carburetion sales, service and installation, including repair \$35.00. A licensee under this classification is authorized for LP gas carburetion sale, service and installation, including repair.

I. CNG-1 CNG carburetion sale, service and installation \$35.00. A licensee under this classification is author-

ized for CNG gas carburetion sale, service and installation, including repair.

J. LNG-1 LNG carburetion sale, service and installation \$35.00.

K. Qualifying party identification card \$15.00.

L. Annual renewal fee per qualifying party identification card \$10.00.

M. Licensing examination fee \$25.00.

N. Licensing re-examination fee \$25.00.

O. The total license fee charged any one licensee for a combination of LP gas activities at any one operating location is set at: \$300.00.

[19.15.40.15 NMAC - Rp, 19.15.40.15 NMAC, 2-1-06]

19.15.40.16 MOTOR FUEL AND PERMANENT MOUNTED TANK REFUELING:

A. Stop all internal combustion engines on vehicles to be serviced.

B. No smoking or open fires.

C. Shut off all pilot lights.

D. Remove all passengers from vehicle.

E. Do not fill past maximum filling capacities.

F. Do not start vehicle until fill connections have separated.

G. Do not relight pilots while in dispensing area.

[19.15.40.16 NMAC - Rp, 19.15.40.16 NMAC, 2-1-06]

19.15.40.17 SELF SERVICE LP GAS DISPENSERS:

A. Self-service dispensers shall be used to dispense LP gas for motor/mobile fuel only. Only ASME constructed motor/mobile fuel type containers that are permanently secured to a vehicle, that incorporate an 80% stop fill device and ASME constructed stack type containers permanently secured to a vehicle shall be filled. The filling of farm carts, moveable fuel storage tenders and DOT cylinders is prohibited. The filling of hot air balloon fuel cells approved by the federal aviation administration will be allowed.

B. All self-service LP Gas dispensers shall comply with the currently adopted version of NFPA 58, sections: **Vehicle fuel dispenser and dispensing stations and installation of vehicle fuel dispensers.**

C. The main liquid valve(s) opening and closing devices shall be installed so that the valve(s) are in the closed position when the transfer operation is not in use.

D. Self-service LP Gas dispensers shall be equipped with a device(s) for emergency shutdown of LP

gas and power, from a location remote from the dispensing and storage areas. The device(s) shall operate to activate the valve(s) installed so as to shut off the power and gas supply to the dispenser(s). The emergency shutdown device(s) shall be distinctly marked for easy recognition.

E. In the event the self service dispenser is located in an area remote from the storage container, an excess flow, or approved shearing device, shall be installed in the piping where it emerges from the ground under the cabinet and be installed so as to ensure that shearing of the piping will occur on the downstream side of the excess flow or shearing device.

F. All hoses used for transfer operation on self service dispensers shall incorporate an approved breakaway (pull -away) device and shall be installed in accordance with the manufacturer's instructions.

G. Appropriate step by step operating instructions shall be posted at or on each dispenser, and shall be readily visible to the operator during transfer operations. The instructions shall describe each action necessary to operate the dispenser.

[19.15.40.17 NMAC - Rp, 19.15.40.17 NMAC, 2-1-06]

19.15.40.18 PIPING AND APPLIANCES WITHIN BUILDINGS:

A. All piping and LPappliances must meet current NFPA 54 and NFPA 58 requirements, with the exception that anodeless flexible risers may be used at the tank and at the house.

B. LP Gas piping or appliances in attics, under floor area, or below grade must be adequately ventilated. Ventilation openings shall be a minimum of 36 square inches.

C. Gas utilization equipment located in confined spaces shall be provided with two permanent openings, one commencing within 12 inches of the top, and one commencing within 12 inches of the bottom of the enclosure.

[19.15.40.18 NMAC - Rp, 19.15.40.18 NMAC, 2-1-06]

19.15.40.19 MOVEMENT OF LP GAS CONTAINERS AT COMMERCIAL INDUSTRIAL SITES OR SCHOOLS:

A. At commercial sites, industrial sites or schools no person shall move an LP gas container(s) without written permission from the owner, unless such movement is required on an emergency basis to prevent loss of life or property or the spread of fire or as required to eliminate a safety hazard.

B. This regulation shall not govern situations where it is ordered by any police or fire officials in their performance of their official duties.

C. If an emergency move is made, the LP gas bureau shall be notified by telephone within 12 hours of said move and a written explanation shall be mailed to the LP gas bureau within 24 hours of said move as evidenced by the postmark.

D. Movement of LP gas containers may be made by persons other than the owner ten days after giving written request to the owner, as evidenced by return receipt at his last known address.

E. Containers moved shall be set securely on a stable base as to prevent danger or damage to the container and/or appurtenances by slipping, falling or rollover. All openings shall be secured so as to prevent release of gas in either liquid or vapor form.

[19.15.40.19 NMAC - Rp, 19.15.40.21 NMAC, 2-1-06]

19.15.40.20 CONTAINERS AND INSTALLATIONS:

A. Safe installation. No LP gas container shall be filled or LP gas system used that does not meet the requirements of NFPA 58, NFPA 54 or this document.

B. Filling of Containers. Transfer of LP Gas to or from any LP Gas container shall be only by the owner or upon the owners authorization.

C. Chart 1 (all services except cargo tanks). ASME 1949 and earlier and U-68 and U-69 Codes are approved for all LP gas service, except cargo tank, regardless of installation date, with the following working pressures and relief valve settings, when using propane grade 5 or higher.

Working Pressure	100	125	150	175	200	225	250	251+
Approved	No	No	No	No	Yes	Yes	Yes	Yes
Relief Valve Setting (%)	100 to 125	137 to 156	165 to 187	192 to 218	220 to 250	247 to 281	275 to 317	110% to 125%

D. Chart 2 (bulk service). API-ASME Code, ASME U-201, 1950 and 1952 or later ASME Codes are approved for bulk plant use*, and for all other container use if manufactured after June 30, 1959, in accordance with ASME Code, at the time of manufacture with the following working pressures and relief settings, when using propane of grade 5 or higher. ***Cargo containers shall have a minimum working pressure of 250 PSI.**

Working Pressure	100	125	150	175	200	225	250	251+
Approved	No	No	No	No	No	No	Yes	Yes
Relief Valve Setting (%)	100 to 125	220 to 250	88% to 100%					

E. Chart 3 (domestic tank service). API-ASME Code, ASME U-200, U-201, 1950 and 1952 or later ASME Codes, if installed in New Mexico before June 30, 1959, may be moved from one place to another within the state, but not brought into the state, are approved for domestic tank service with the following working pressures and relief settings, when using propane of grade 5 or higher.

Working Pressure	100	125	150	175	200	225	250	251+
Approved	No	No	No	No	No	No	Yes	Yes
Relief Valve Setting (%)	110 to 125	132 to 150	154 to 175	176 to 200	198 to 225	220 to 250	88% to 100%	

F. Container protection. Where physical damage to LP gas containers, or systems of which they are a part, from vehicles is a possibility, precautions shall be taken against such damage.

(1) Container protection shall be crash post or other protection acceptable to the LP gas bureau.

(2) When crash post are used they shall be a minimum of 2 7/8 inch outside diameter, with 3 feet above ground, 2 feet below ground, embedded in concrete, filled with concrete, and spaced 4 feet apart. The spacing may be extended to 8 feet between post if a minimum 2-inch welded top rail is installed.

G. Container markings. All LP gas tanks owned by LP gas dealers must be marked with the name and phone number of the LP gas dealer. This regulation does not apply to customer owned tanks.

H. Container screening. Screens for all LP gas above ground containers shall be installed in the following manner.

(1) Screening material shall be non-combustible if container is screened on three sides. If solid screening is used, each wall up to 20 feet in length shall be provided with at least one opening, with an additional opening for each 20 feet of length or fraction thereof. Each opening shall have a minimum size of 50 square inches, the bottom of which shall not be more than 6 inches above the ground.

(2) If the screen encloses two sides or no more than 50%, a wood fence may be used.

(3) The screen shall enclose no more than three sides of the container.

(4) There shall be a minimum clearance of three feet from the container to the screen.

(5) The screen shall not exceed the height of the container by more than one foot.

(6) Covers or tops shall not be installed over containers.

(7) All tanks on school grounds, church grounds, playgrounds, etc. shall be fenced. Any request for exemption to, or deviation from, the fencing requirement shall be made in writing to the bureau. If, upon investigation of a particular proposed tank installation, the inspector and bureau chief determine it is not necessary, a fence shall not be required.

[19.15.40.20 NMAC - Rp, 19.15.40.22 NMAC, 2-1-06]

19.15.40.21 LP GAS CYLINDER EXCHANGE INSTALLATIONS:

A. A cylinder exchange installation registration form and approved plans shall be required prior to installation.

B. Installation shall meet the requirements of NFPA 58.

C. Cylinder exchange cabinets shall be approved, anchored and meet the requirements of NFPA 58.

D. Protection against vehicle impact shall be crash post or other protection acceptable to the LP gas bureau.

(1) Crash post shall be installed as required elsewhere in this document.

(2) A minimum six inch high concrete raised sidewalks or six inch high wheel stops can be used.

(a) The minimum distance from the raised sidewalks or wheel stops to the cabinet shall be 48 inches.

(b) The wheel stops shall be anchored and secured with at least 5/8 inch by 18 inch steel rods.

E. Cylinder exchange installations in excess of 720 lb propane stored shall be provided with at least one approved portable fire extinguisher having a minimum capacity of 18 lb dry chemical with B:C rating.

[19.15.40.21 NMAC - N, 2-1-06]

19.15.40.22 LP GAS INSTALLATIONS AT SPECIAL EVENTS:

A. Containers: All containers must be located outside the booth, the building, or the enclosure. All containers must be secured in a position (usually in an upright position) so that vapor only will be present at the vapor service valve. The secured container's device, such as a chain, must be able to support the weight of the container plus the container's contents. All containers must be approved LP gas container. Any DOT cylinder for LP gas must be marked with the re-qualification date(s) if the container is more than twelve years old. All containers must be leak-free. Any LP gas container showing excessive rust, corrosion, pitting, or denting shall not be used. The bottom of each container shall be checked for these conditions. All portable DOT cylinders must have a fixed "warning" label that includes information on the potential hazards of LP gas. Outlets for all unused containers shall be capped or plugged. The vapor service valve must be sealed when the container is not in use. (Example: A p.o.l. plug installed in the open vapor outlet.) A quick-closing coupling approved for use on LP gas containers may be used in lieu of the sealing cap or plug. When a container's water capacity is greater than 239 pounds (nominal 100 lb.) An LP gas permit must be obtained before using such container.

B. Hoses: The only hoses that shall be used are those approved for use with LP gas. The hose end couplings must be installed as recommended by the hose manufacturer. (Unacceptable: an automotive screw-type clamp installed on the end of the hose.) All hoses must be leak-free. All hoses must be kept out of the way of foot and vehicular traffic.

C. Appliances: All appliances used in food booths must have an accessible shut-off valve near the appliance that can be easily closed in case of an emergency. Only appliances that are leak-free and approved for the use of LP gas shall be used.

D. Filling of containers: The filling of LP gas containers on site shall be done in a designated area separated from the general public or at times when the visitation of the general public is minimal. Nylon jackets, cigarette lighters, strikers, and/or matches are not allowed in the filling area.

E. Leak test: A leak test shall be performed each day before the food booth is opened for business, any time a cylinder is exchanged, and any time the LP gas system is modified. Soap (without ammonia) mixed with water or a combustion gas hand-held electronic leak detector can be used for detection of leaks. The entire system must be free of leaks.

[19.15.40.22 NMAC - Rp, 19.15.40.23 NMAC, 2-1-06]

19.15.40.23 MANUFACTURED HOMES:

A. Exterior gas piping.

(1) Location of containers, containers and underground piping.

(a) Containers, appurtenances and underground piping shall be installed in accordance with the currently adopted edition of NFPA 54 and NFPA 58.

(b) Underground gas piping shall not be installed under any manufactured home or any attachments to the manufactured home. This is an exception to NFPA 54.

(2) All gas piping beneath a manufactured home shall be adequately supported by galvanized, or equivalently protective metal straps or hangers at least every four (4) feet, except, where adequate support and protection is provided by structural members.

(3) Gas shut-off valves shall not be placed beneath a manufactured home.

(4) Any extensions or alterations made to the gas piping system for the purpose of establishing the supply inlet for connection to the riser may not reduce or restrict the gas piping size from that of the original inlet.

(5) There shall be only one point of crossover between the section of a multi wide manufactured home, which must be readily accessible from the outside.

(6) Unless otherwise approved by the bureau the connector used for the crossover on multi wide manufactured homes when gas is supplied to more than one (1) section, must be made by a listed "quick disconnect" device which shall be designed to provide a positive seal of the supply side of the gas system when such device is separated. Refer to Exhibit #1.

(7) The crossover connection shall be of the same size as the piping with which it directly connects.

(8) The gas inlet on the manufactured home shall protrude no more than six (6) inches from the manufactured home. The inlet shall be rigidly anchored or strapped to a structural member within six (6) inches of the point where it enters beneath the manufactured home.

(9) Bond of gas piping.

(a) Gas piping shall not be used as an electrical ground.

(b) Gas piping shall be bonded. Metallic gas piping shall be considered bonded if it is connected to the terminal on the chassis of the manufactured home by clamps, solderless connectors or by suitable ground-type straps.

(10) **Location of riser.** The gas riser shall be located within twelve (12) inches of the manufactured home.

(11) **Site connector.** Each manufactured home utilizing gas shall be connected to the manufactured home site outlet by an approved mobile home connector not more than thirty-six (36) inches in length. If

encased flexible polyethylene pipe is used, a flexible connector shall not be required. The above ground portion of the polyethylene flexible riser shall not exceed thirty-six (36) inches in length and be installed so as to maintain flexibility and compensate for expansion and contraction.

(12) **Mechanical protection.** All gas outlet risers, regulators, meters, valves or other exposed equipment shall be protected from mechanical damage by vehicles or other causes. Meters shall not be supported by gas service piping. Regulators may be supported by the rigid extended piping of the manufactured home.

(13) **Maximum pressure permitted.** Gas supplied into the manufactured home shall not exceed 1/2 pounds per square inch gauge or fourteen (14) inches water column.

(14) **Gas pipe sizing.** Gas piping systems shall be sized so that the pressure drop to any appliance inlet connection from any gas supply connections, when all appliances are in operation at maximum capacity, is no more than 0.5 inch water column. Conformance may be determined on the basis of test, or the gas piping system may be sized in accordance with the current National Fuel Gas Code, NFPA 54.

B. Interior gas piping.

(1) Interior gas piping shall be installed in accordance with the currently adopted edition of NFPA 54 and NFPA 58.

(2) **Gas -fired appliances.** Each gas-fired appliance must have a listed shut-off valve located within three (3) feet of the appliance and located in the same room as the gas appliance.

(3) **Appliance connectors.** Appliance connectors shall not exceed three (3) feet in length, except for range connectors, which shall not exceed six (6) feet in length.

(4) **Inspection testing and purging.** Inspection testing and purging shall comply with the currently adopted edition of NFPA 54.

C. Heat producing appliances. Every heat-producing appliance used in manufactured homes shall be listed or certified by an approved nationally recognized testing agency for this application.

(1) **Fuel conversion.** Fuel burning appliances shall not be converted from one fuel to another unless converted in accordance with the terms of its listing.

(2) **Venting.** Fuel burning, heating and refrigeration appliances shall be of the vented type and vented to the outside. In no case shall the vent of a gas-burning appliance terminate underneath the manufactured home.

(a) Fuel burning heat-producing appliances, except ranges, gas dryers and ovens, shall have complete separation of the

combustion system from the atmosphere of the manufactured home. Combustion air inlets and flue gas outlets shall be listed or certified as components of the appliance.

(b) Vents, roof jacks and special fittings supplied as component parts of an appliance shall be installed in conformity with the terms of their listing. A single wall metal vent shall not be used unless it is a component part of a listed appliance.

(c) Vent terminations shall not be less than three (3) feet from any motor driven air intake that opens into habitable areas.

(d) Every joint of any vent or vent connector shall be secure, rigid, and tight, in alignment and have approved design and workmanship. Vent connectors shall be firmly attached to draft hood outlets or flue collars by sheet metal screws or other approved means, or the vent connectors using listed TYPE B or TYPE L gas vent materials shall be securely assembled using the method shown in the manufacturer's instructions.

(3) Gas clothes dryers.

(a) Clothes dryers shall not be installed in a room intended to be used for sleeping purposes.

(b) Clothes dryers shall be exhausted to the outside air by a moisture lint exhaust duct and terminating fitting listed or certified as components of the appliance.

(c) A clothes dryer moisture lint exhaust duct shall not be connected to any furnace duct, gas vent or chimney.

(d) The moisture lint exhaust duct shall not terminate beneath the manufactured home.

(e) Moisture lint exhaust ducts shall not be connected with sheet metal screws or other fastening devices, which extend into the duct.

(4) **Installation.** The installation of each heat producing appliance shall conform to the terms of its listing as specified on the appliance and in the manufacturer's instructions. The installer shall leave the manufacturer's instructions attached to the appliance. Every appliance shall be secured in place to avoid displacement and movement from vibration and road shock.

(a) Instructions. Instruction operating instructions shall be provided with the appliance.

(b) Marking. Information on clearances, input ratings, lighting and shut-down shall be attached to the appliances with the same permanence as the nameplate, and so located that it is easily readable when the appliance is properly installed. Each fuel-burning appliance shall bear a permanent marking designating the type(s) of fuel for which it is listed.

(c) Accessibility. Every appliance shall be accessible for inspection, serv-

ice, repair and replacement without removing permanent construction. Sufficient room shall be available to enable the operator to observe the burner, control and ignition means while starting the appliance.

(5) Location. Heat producing appliances shall be so located that no doors, drapes or other such material can be placed or swung closer to the front of the appliance than the clearances specified on the labeled appliances.

(6) Clearances. Clearances between heat producing appliances and adjacent surfaces shall not be less than specified in the terms of their listing. Clearance spaces shall be framed in or guarded to prevent creation of storage space within the clearance specified.

D. Cross ventilation.

(1) All manufactured homes shall have one (1) square foot of unrestricted venting area for every one hundred-fifty (150) square feet of enclosed floor space. Vents shall be uniformly distributed on the two

(2) opposite long-walls. At least one vent shall be located within four (4) feet of each end wall.

Vents shall be constructed and installed to exclude entry of vermin and water.

(3) This section shall not apply retroactive to existing installations that were in compliance with the codes in effect at the time of installation or approved prior to the effective date of this document.

E. Manufactured home parks.

(1) Fuel gas equipment and installation. Fuel gas equipment and installations installed within a building in a manufactured home park shall comply with the current standard for the Installation of Gas Appliances and Gas Piping (NFPA 54), or the current standard for the Storage and Handling of Liquefied Petroleum Gases (NFPA 58).

(2) Manufactured home park gas systems. Gas equipment and installations within a manufactured home park shall be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction.

(a) Required gas supply. The minimum hourly volume of gas required at each manufactured home lot outlet or any section of the mobile home park has piping system shall be calculated as shown on Chart IV.

CHART IV-Demand Factors for use in Calculating Gas Piping Systems in Manufactured Home Parks.

No Of Manufactured Home Sites	BTU Per Hour Per Mfg. Home Site
1	125,000
2	117,000
3	104,000
4	96,000
5	92,000
6	87,000
7	83,000
8	81,000
9	79,000
10	77,000
11 to 20	66,000
21 to 30	62,000
31 to 40	58,000
41 to 60	55,000
Over 60	50,000

(b) Lot shut-off valve. On systems supplied from a central container, each manufactured home lot shall have an approved gas shut-off valve installed upstream of the mobile home lot gas outlet and located on the outlet riser at a height of not less than four (4) inches above grade. Such valve shall not be located under any manufactured home. Whenever the manufactured home lot outlet is not in use, the outlet shall be equipped with an approved cap or plug to prevent accidental discharge of gas.

[19.15.40.23 NMAC - Rp, 19.15.40.24 NMAC, 2-1-06]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

This is an amendment to 14.5.2 NMAC, Section 13, effective 02-01-06.

14.5.2.13 SUSPENSION, CANCELLATION, OR REVOCATION OF PERMIT:

A. The building official is authorized to suspend, cancel or revoke a permit issued pursuant to the code for which the official has responsibility in the following causes:

(1) whenever the permit is issued in error, or on the basis of incorrect, inaccurate or incomplete information;

(2) whenever the permit was issued in violation of the CID rules;

(3) when there is no contractor on the job;

(4) work stoppage;

(5) change in the person or entity performing the work;

(6) at the request of the permittee;

(7) whenever the person to whom the permit is issued is in violation of the licensing or certification requirements of the act or 14.6 NMAC.

B. A suspended permit may be reactivated upon approval of the appropriate building official and payment of any fee assessed pursuant to 14.5.5 NMAC, Fees.

[14.5.2.13 NMAC - Rp, 14.5.2.12 NMAC & 14.7.2.10 NMAC, 7-1-04; A, 02-01-06]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

This is an amendment to 14.10.5 NMAC, Part 5. The State of New Mexico in order to be consistent with National and State Adopted Electrical Codes has changed the name of the 2002 New Mexico Electrical Safety Code.

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 10 ELECTRICAL
CODES
PART 5 [2002] 2005 NEW
MEXICO ELECTRICAL SAFETY
CODE**

**NEW MEXICO SPEECH-
LANGUAGE PATHOLOGY,
AUDIOLOGY AND
HEARING AID
DISPENSING PRACTICES
BOARD**

16 NMAC 26.2, Licensure and Licensure Requirements, filed October 9, 1996, is repealed effective 2-3-06 and replaced as 16.26.2 NMAC, Licensure Requirements, effective 2-3-06.

16 NMAC 26.3, Application Procedures and Qualifications for Licensure, filed October 9, 1996, is repealed and replaced by 16.26.2 NMAC Licensure Requirements effective 2-3-06.

**NEW MEXICO SPEECH-
LANGUAGE PATHOLOGY,
AUDIOLOGY AND
HEARING AID
DISPENSING PRACTICES
BOARD**

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 26 HEARING, SPEECH
AND AUDIOLOGY PRACTITIONERS
PART 2 L I C E N S U R E
REQUIREMENTS**

16.26.2.1 ISSUING AGENCY:
New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.
[16.26.2.1 NMAC - Rp, 16 NMAC 26.2.1, 2/3/06]

16.26.2.2 SCOPE: All individuals wishing to practice as a speech-language pathologist, audiologist, hearing aid dispenser or individuals working as a clinical fellow, persons working under a hearing aid dispensing training permit and temporary professional license holders who will be offering adjunct services in speech-language pathology or audiology.
[16.26.2.2 NMAC - Rp, 16 NMAC 26.2.2, 2/3/06]

**16.26.2.3 S T A T U T O R Y
AUTHORITY:** These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Sections 61-14B-1 to 61-14B-25 NMSA 1978.
[16.26.2.3 NMAC - Rp, 16 NMAC 26.2.3, 2/3/06]

16.26.2.4 D U R A T I O N :

Permanent.
[16.26.2.4 NMAC - Rp, 16 NMAC 26.2.4, 2/3/06]

16.26.2.5 EFFECTIVE DATE:
February 3, 2006, unless a later date is cited at the end of a section.
[16.26.2.5 NMAC - Rp, 16 NMAC 26.2.5, 2/3/06]

16.26.2.6 OBJECTIVE: The objective of Part 2 is to state and establish that licensure is mandated by statute to practice as a speech-language pathologist, audiologist, clinical fellow and hearing aid dispenser and to outline requirements. Persons and practices not affected are defined.
[16.26.2.6 NMAC - Rp, 16 NMAC 26.2.6, 2/3/06]

16.26.2.7 D E F I N I T I O N S :
[RESERVED]

**16.26.2.8 L I C E N S I N G
REQUIRED TO PRACTICE:**

A. Section 61-14B-7 NMSA 1978 of the act provides that no person shall practice or hold him or herself out as being able to practice speech-language pathology, audiology, hearing aid dispensing in the state of New Mexico unless he or she is licensed in accordance with the provisions of this act.

B. All individuals licensed under this act must display their license in their primary location at their place of employment.

C. Separate licenses shall be granted in speech-language pathology, audiology, and hearing aid dispensing. An applicant may be granted a dual license for speech-language pathology and audiology upon successful completion of requirements for both of these licenses. A hearing aid dispensing license does not indicate that the person holding the license is an audiologist.

D. The board shall have 30 days from the receipt of a complete application to process and approve an application.
[16.26.2.8 NMAC - Rp, 16 NMAC 26.2.8, 2/3/06]

**16.26.2.9 PERSONS AND
PRACTICES NOT AFFECTED:**

A. Recognized professional groups: The act does not prohibit members of recognized professional groups, other than speech-language pathologists, audiologists and/or hearing aid dispensers, from doing appropriate work in the area of communication disorders consistent with their professional qualifications and with the standards and ethics of their respective professions. Such professional groups include, but are not limited to the following:

- (1) physicians licensed to practice medicine in New Mexico;
- (2) orthodontists;
- (3) certified teachers of the deaf.

B. Students: The act does not restrict the supervised activities of a speech-language pathology or an audiology student which constitute a part of his or her supervised course of study wherein the student is designated as a speech-language pathology student, audiology student or other such title clearly indicating the training status appropriate to his or her level of training.

[16.26.2.9 NMAC - Rp, 16 NMAC 26.2.9, 2/3/06]

**16.26.2.10 APPLICATIONS
FOR LICENSURE:** Application shall be made on forms prescribed by the board office.

A. All applications for licensure must be accompanied by a check or money order payable to the board in the amount of the application and initial licensing fee. The licensing and renewal fee are set by the board and are non-refundable.

B. All initial applications must be signed by the applicant and sworn to by the applicant before a notary public.

C. All applications must be accurate.

D. All applications must be complete before they will be accepted by the board office.

[16.26.2.10 NMAC - Rp, 16 NMAC 26.3.8, 2/3/06]

**16.26.2.11 QUALIFICATIONS
AND APPLICATION FOR LICEN-
SURE AS A SPEECH-LANGUAGE
PATHOLOGIST:** Application for licensure as a speech-language pathologist must be accompanied by the following documents:

A. official transcripts verifying at least a master's degree in speech-language pathology, speech-language and hearing science, communication disorders or equivalent degree regardless of degree name;

B. a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution; and

C. a certified copy of a certificate of clinical competency from a board recognized national speech-language association or proof of completion of the clinical fellowship year or equivalent; and

D. proof of having passed a nationally recognized standard examination in either speech-language pathology;

E. passing the jurisprudence examination with a grade of no less

than 70%.

[16.26.2.11 NMAC - Rp, 16 NMAC 26.2.11, 2/3/06]

16.26.2.12 QUALIFICATIONS AND APPLICATION FOR LICENSURE AS A SPEECH-LANGUAGE PATHOLOGIST AND NONDISPENSING AUDIOLOGIST: Application for licensure as a speech-language pathologist or audiologist must be accompanied by the following documents:

A. official transcripts verifying at least a master's degree in speech-language pathology, audiology, speech-language and hearing science, communication disorders or equivalent degree regardless of degree name; or

B. a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the Board from the conferring institution; and

C. a certified copy of a certificate of clinical competency from a board recognized national speech-language association or proof of completion of the clinical fellowship year or equivalent; and

D. proof of having passed a nationally recognized standard examination in either speech-language pathology or audiology or both;

E. passing the jurisprudence examination with a grade of no less than 70%.

[16.26.2.12 NMAC - Rp, 16 NMAC 26.3.9, 2/3/06]

16.26.2.13 QUALIFICATIONS AND APPLICATION FOR ENDORSEMENT TO DISPENSE HEARING AIDS BY AUDIOLOGIST OR OTOLARYNGOLOGIST: A licensed audiologist or otolaryngologist may apply for hearing aid dispensing endorsement by providing evidence satisfactory to the board of:

A. six months experience in the dispensing of hearing aids through practical examination, a notarized letter from an employer, graduate training program, or a clinical fellow supervisor verifying the required six months;

B. maintains or occupies a business location, hospital, clinical medical practice or other facility where hearing aids are regularly dispensed and records may be examined;

C. passes the jurisprudence examination, which is part of the application;

D. certifies that the applicant is not guilty of any activities listed in Section 61-14B-21 NMSA 1978.

[16.26.2.13 NMAC - Rp, 16 NMAC 26.3.10, 2/3/06]

16.26.2.14 QUALIFICATIONS

AND APPLICATION FOR LICENSURE FOR A HEARING AID DISPENSER:

A. Application for licensure as a hearing aid dispenser must be accompanied by documentation of the following:

(1) applicant is eighteen years of age or older;

(2) has a high school education or the equivalent; and

(3) has a business location in New Mexico and can provide satisfactory evidence of the following:

(a) a notarized letter from an employer verifying completion of the training requirements as outlined for the temporary hearing aid dispensing trainee permit;

(b) written examination: the board will require each candidate to pass the IHS, or the NBC-HIS hearing aid written examination, or a nationally recognized hearing aid dispensers examination approved by the board or other exams approved by the board with an overall score of no less than 70%;

(c) practical examination: the board will require each candidate to pass the hearing aid practical examination or other exams approved by the board with an overall score of no less than 70%; and

(d) passing the jurisprudence examination with an overall score of no less than 70%;

(4) any applicant who fails any portion of the licensing examination two times may not reapply until he/she has waited six months and repeated the training and application requirements; at that time the entire exam must be repeated.

B. Physicians eligible for certification or certified by the American board of otolaryngolog head and neck surgery, who wish to be licensed as a hearing aid dispenser, must provide the following documents:

(1) a certified copy of current New Mexico medical license; and

(2) a notarized letter from a qualified sponsor as specified in the act verifying work experience of at least six months in the fitting of the hearing aids, the initial 320 hours of which must be under direct supervision of the sponsor.

[16.26.2.14 NMAC - Rp, 16 NMAC 26.3.11, 2/3/06]

16.26.2.15 QUALIFICATION AND APPLICATION FOR TEMPORARY HEARING AID DISPENSING TRAINEE PERMIT: Individuals who meet all requirements for a hearing aid dispenser's license but do not have the required practical experience in dispensing of hearing aids shall apply for a temporary hearing aid dispensing permit.

A. A trainee permit may be

issued at any time and will be valid for one (1) year.

B. Upon expiration, another training permit may not be issued for one calendar year following expiration of the previous permit.

C. The trainee must identify a qualified sponsor as specified in the act.

D. Each trainee shall receive intensive training working under the direct supervision of his/her sponsor for a minimum of three hundred twenty (320) hours within a three (3) month period.

E. Following completion of 320 hours, an additional five (5) continuous months of full time work is required. All activities of the trainee during this time must be reviewed and approved by the sponsor and may include dispensing hearing aids, making adjustments in fitting and modifying and repairing hearing aids and earmolds. All sales receipts must have some evidence of the sponsor's approval of the sale.

F. Passing the jurisprudence examination with a grade of no less than 70%.

[16.26.2.15 NMAC - Rp, 16 NMAC 26.3.12, 2/3/06]

16.26.2.16 HEARING AID DISPENSER TRAINEE EXAMINATION FOR COMPETENCE: All candidates under a temporary hearing aid dispensing permit under a training program shall:

A. pass the practical examination which tests proficiency in pure tone audiometry, including air conduction and bone conduction testing, live-voice or recorded-voice speech audiometry, including speech reception threshold and speech discrimination tests, masking when indicated, recording and evaluation audiograms and speech audiometry determining proper selection and adjustment of hearing aids;

B. taking earmold impressions;

C. the board office will schedule written and practical examinations once each quarter; each applicant will be notified of the examination schedule for the next year when they receive their trainee permit;

D. an applicant who fails the written or the practical portion of the examination must pay the application fee before being allowed to retake the examination;

E. applicants who cannot sit for the examinations due to circumstances beyond their control must submit a written request prior to the scheduled examination; extenuating circumstances include illness, death in the immediate family, military service, or other severe circumstances which do not allow an applicant to attend the scheduled examination; applicant must

provide documentation of extenuating circumstances; and

F. applicants who fail to sit for scheduled examinations without prior notification must submit a new application, including the fee and all documentation.
[16.26.2.16 NMAC - Rp, 16 NMAC 26.3.13, 2/3/06]

16.26.2.17 QUALIFICATION FOR LICENSURE FOR CLINICAL FELLOWS:

A. Clinical fellow (CF) has met all academic course work and practicum requirements for a master's degree in speech-language pathology, speech pathology, communication disorders or audiology or both or equivalent degree(s) regardless of degree name that would enable the individual to successfully be granted certification from a nationally recognized speech-language and or hearing association after completion of the clinical fellowship if the individual chooses to apply national certification.

B. Procedure for applying for licensure as a clinical fellow.

(1) An individual will complete application including appropriate fee and clinical fellow plan and submit to the board office at the initiation of the clinical fellow period. The individual shall also submit:

(a) official transcripts verifying at least a master's degree in speech-language pathology, audiology, speech-language and hearing science, communication disorders or equivalent degree regardless of degree name; or

(b) a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution; and

(c) certify that he/she has received no reprimands of unprofessional conduct or incompetency; and

(d) file a clinical fellow plan that meets with board approval that designates a clinical fellow supervisor who is licensed in accordance of this act and is practicing in the same field as the clinical fellow.

(e) CFY means no less than 9 months full time employment defined as a minimum of 32 clock hours of work per week. This requirement also may be fulfilled by part time employment as follows:

(i) work of 15 - 19 hours per week over 18 months;

(ii) work of 20 - 24 hours per week over 15 months; or

(iii) work of 25 - 31 hours per week over 12 months.

(iv) In the event that part time employment is used to fulfill a part of the CFY, 100% of the minimum hours of part time work per week require-

ments must be spent in direct professional experience as defined above. Professional employment of less than 15 hours per week will not fulfill any part of this requirement.

(f) a clinical fellow in audiology is not required to have a temporary hearing aid training permit.

(g) the clinical fellow must understand and abide by the code of ethics adopted by the board.

(2) Speech-language pathologist's supervision requirements for CFYs:

(a) Duties of clinical fellow supervisor: Clinical fellow supervision must be based on no less than 36 occasions of monitoring. These can include on site monitoring activities such as conferences with the clinical fellow, evaluation of written reports, evaluation by professional colleagues or may be executed by correspondence.

(b) Should the clinical fellow supervisor suspect at anytime during the clinical fellow plan that the clinical fellow under her/his supervision will not meet regulations, the clinical fellow supervisor must counsel the clinical fellow both orally and in writing and maintain careful written records of all contacts, contracts and conferences in the ensuing months.

(c) It is the responsibility of the clinical fellow to request feedback from their supervisor when the clinical fellow requires such feedback.

C. Completion of clinical fellowship: Upon completion of CFY, the CF is required to submit application for licensure as a speech-language pathologist or audiologist or both.

[16.26.2.17 NMAC - Rp, 16 NMAC 26.3.14, 2/3/06]

16.26.2.18 TEMPORARY PARAPROFESSIONAL LICENSURE AS AN APPRENTICE IN SPEECH-LANGUAGE (ASL):

A. Prerequisite requirements:

(1) Acceptance of a temporary paraprofessional licensee as an apprentice in speech-language is subject to board approval. Such licensees shall:

(a) be working towards a license pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(b) certify that he/she is not guilty of any activities listed in Section 61-14B-21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act; and

(c) provide proof of having met educational, supervision, and employment requirements.

(2) It is the responsibility of the apprentice in speech-language and the

supervising speech-language pathologist to insure the distinction between the roles of the apprentice in speech-language and the graduate student.

B. Educational requirements:

(1) a baccalaureate degree in communication disorders or baccalaureate degree in another field with thirty (30) semester hours of credit in communication disorders;

(2) enrolled in a master's degree program in speech-language pathology or communication disorders and completes a minimum rate of nine (9) semester hours per year of graduate courses in communication disorders per year; or

(a) if not accepted into a master's degree program in speech-language pathology or communication disorders enrolled in and completes nine (9) semester hours of graduate courses per year with at least three (3) hours in communication disorders, six (6) hours may be taken in a related field;

(b) if the educational institution does not permit students who are not matriculated into a graduate program to take graduate courses in communication disorders, the student may substitute three (3) hours in a related field for the three (3) hours in communication disorders, in addition to the other six (6) hours in a related field.

(c) acceptance in a master's degree program must take place within two (2) years of initial license; and

(3) maintains a minimum of a 3.0 GPA in communication disorders course work and/or master's degree program.

C. Supervision requirements:

(1) Work of the apprentice in speech-language must be supervised by a speech-language pathologist licensed by this act and who has a minimum of two years experience in the field.

(a) Minimum of ten (10) percent of contact time of the apprentice in speech-language must be direct supervision.

(b) Minimum of ten (10) percent of contact time of the apprentice in speech-language must be indirect supervision.

(2) It is recommended that the speech-language pathologist's and audiologist's direct caseload size be limited to no more than 40 clients.

(a) A speech-language pathologist may supervise a maximum of three apprentices at one time.

(b) The supervising speech-language pathologist is expected to appropriately reduce their direct caseload for each apprentice they supervise, ensuring the maintenance of high professional standards as stated in the code of ethics.

(c) It is the responsibility of the

supervising speech-language pathologist and the apprentice in speech-language to ensure the distinction between the roles of the apprentice in speech-language and the graduate student.

(3) It is the responsibility of the supervising speech-language pathologist and the apprentice in speech-language to ensure the supervision reports are submitted every four months during the licensure period.

D. Employment requirements:

(1) Terms of employment must require at least a temporary paraprofessional license as an apprentice in speech-language. The role of the apprentice in speech-language shall be determined in collaboration with the supervising speech-language pathologist (SLP) and the employer.

(2) Employment duties must be limited to the following:

(a) conduct speech-language and/or hearing screenings;

(b) conduct treatment programs and procedures that are planned, selected and/or designed by the supervising SLP;

(c) prepare written daily plans based on the overall intervention plan designed by the supervising SLP;

(d) record, chart, graph, or otherwise display data relative to the client performance and report performance changes to the supervising SLP;

(e) maintain daily service/delivery treatment notes and complete daily charges as requested;

(f) report but not interpret data relative to client performance to teachers, family, or other professionals;

(g) assist the speech-language pathologists during assessment of clients, such as those who are difficult to test;

(h) perform clerical duties, including maintenance or therapy/diagnostic material/equipment, client files, as directed by the SLP supervisor;

(i) participate with the speech-language pathologist in research projects, in-service training, and public relations programs.

E. Employment duties must not include any of the following:

(1) administer diagnostic tests;

(2) interpret data into diagnostic statements or clinical management strategies or procedures;

(3) select or discharge clients for services;

(4) interpret clinical information including data or impressions relative to client performance;

(5) treat clients without following the individualized treatment plan;

(6) independently compose clinical reports except for progress notes to be held in the client's file;

(7) refer a client to other professionals or agencies;

(8) provide client or family counseling;

(9) develop or modify a client's individual treatment plan: IEP/IFSP/ clinical report or plan of care in anyway without the approval of the SLP supervisor;

(10) disclose clinical or confidential information;

(11) sign any formal documents without the supervising SLP co-signature;

(12) represent himself/herself as a speech-language pathologist.

F. Documentation required: All applicants for temporary paraprofessional license as an apprentice in speech-language are required to provide the following documentation to the board each year:

(1) a completed board approved license application form, signed in the presence of a notary public;

(2) the required license application fee; and

(3) a completed board approved verification of employment form verifying:

(a) applicant's employment;

(b) performance responsibilities of the apprentice in speech-language;

(c) limitations on employment practices of the apprentice in speech-language license holder (apprentice in speech-language);

(d) provision for supervision by an SLP licensed according to this act.

(4) a completed board approved verification of education form verifying:

(a) course work completed in communication disorders or other courses as outlined in the degree plan with a minimum GPA of 3.0;

(b) current degree plan once the applicant is admitted to a master's degree program; and

(c) official copy of transcripts from college or university.

[16.26.2.18 NMAC - Rp, 16 NMAC 26.2.15, 2/3/06]

HISTORY OF 16.26.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

HADF 71-1, Rules and Regulations, filed 12/21/71.

HADF 77-1, Rules and Regulations, filed 5/23/77.

HED-80-1 (HSD), Regulations Governing the Hearing Aid Act, filed 2/5/80.

HED 82-3, Regulations Governing the Hearing Aid Act, filed 3/18/82.

HED 83-1 (HSD), Regulations Governing the Hearing Aid Act, filed 4/5/83.

HED-81-6 (HSD), Regulations Governing the Speech-Language Pathology and Audiology Act, filed 8/4/81.

HED-82-2, Regulations Governing the Speech-Language Pathology and Audiology Act, filed 3/17/82.

HED-83-2 (HSD), Regulations Governing the Speech-Language Pathology and Audiology Act, filed 4/5/83.

HED 86-13 (HSD), Regulations Governing the Speech-Language Pathology and Audiology Act, filed 1/7/87.

BCD 87-2, Regulations Governing the Hearing Aid Act, filed 11/10/87.

BCD 88-1, Regulations Governing the Hearing Aid Act, filed 3/8/88.

BCD 88-2, Regulations Governing the Speech-Language Pathology and Audiology Act, filed 3/11/88.

Rule 91-2, Qualifications for Licensure, filed 10/25/91.

Rule 91-3, Temporary Trainee Permits, filed 10/25/91.

Rule 91-4, Applications for Licensure, filed 10/25/91.

Rule 91-5, Examination for Competence, filed 10/25/91.

History of Repealed Material:

16 NMAC 26.2, Licensure and Licensure Requirements, filed 10/9/96 - Repealed effective 2/3/2006.

16 NMAC 26.3, Application Procedures and Qualifications for Licensure, filed 10/9/96 - Repealed effective 2/3/2006.

NEW MEXICO SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.10 NMAC Sections 1, and 8, effective 2/3/06.

16.26.10.1 ISSUING AGENCY: New Mexico Speech Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[16.26.10.1 NMAC - N/E, 11/9/05; A, 2/3/06]

16.26.10.8 PROVISIONS FOR EMERGENCY LICENSURE:

A. Speech-language pathologist, audiologist and hearing aid [~~dispensers~~] dispenser currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application [~~which~~] that has been signed and notarized and [~~which~~] that is

accompanied by proof of identity, ~~[which]~~ that may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

(2) refer to 16.26.3.9, 16.26.3.10 and 16.26.3.11 NMAC and Section 61-14B-12.1 NMSA 1978;

(3) sworn affidavit that the applicant was personally or professionally affected by the disaster; ~~[their qualifications may state that the board will perform the verification]~~ the board will verify the qualifications of the applicant.

B. The board may waive the following requirements for licensure:

(1) application and initial license fee;

(2) practical examination for hearing aid dispensers (the applicant will be required to take and pass the practical exam within six months from the date the emergency license is issued); and

(3) jurisprudence exam (the applicant will be required to take and pass the jurisprudence exam within 60 days from the date the emergency license is issued).

C. The board may waive the specific forms required under 16.26.3.9, 16.26.3.10 and 16.26.3.11 NMAC and Section 61-14B-12.1 NMSA 1978, if the applicant is unable to obtain documentation from the federal declared disaster areas.

(1) An applicant for licensure as a speech-language ~~[pathology]~~ pathologist may submit a sworn affidavit if they are unable to produce the following documentation:

(a) transcripts verifying a master's degree in speech-language pathology or communication disorders;

(b) certificate of clinical competence issued by the American speech-language hearing association (ASHA).

(2) An applicant for licensure as an audiologist may submit a sworn affidavit if they are unable to produce the following documentation:

(a) holds a master's degree in audiology or communication disorders; or an equivalent degree in audiology or communication disorders; or an equivalent degree awarded prior to January 1, 2007; meets the academic requirements for certification of clinical competence from a nationally recognized speech language or hearing association in the area that the applicant is seeking licensure; or

(b) holds a doctoral degree in audiology or equivalent degree regardless of degree name and meets academic requirements for certification by a nationally recognized hearing association; and

(c) has completed the current academic, practicum and employment requirements of a nationally recognized speech-language or hearing association; and has

passed a nationally recognized standard examination in audiology.

(3) If an applicant for hearing aid dispenser or an endorsement to dispense may submit a sworn affidavit if they are unable to produce the following documentation:

(a) proof the applicant has a high school education or equivalent;

(b) a business location in New Mexico;

(c) proof of passing the HIS, or the NBC-HIS hearing aid written examination or a nationally recognized hearing aid dispensers examination approved by the board or other exams approved by the board with an overall score of at least 70%;

(d) proof of passing a practical examination with an overall score of at least 70%; if the applicant has not taken the practical exam ~~[he]~~ he/she must take it within 6 months from the date the emergency license is issued; failure to pass the required practical exam will result in termination of the emergency license.

D. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.26.3.9, 16.26.3.10 and 16.26.3.11 NMAC.

E. Licenses issued under 16.26.10 NMAC shall expire six (6) months following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before the expiration date, following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal. [16.26.10.8 NMAC - N/E, 11/9/05; A, 2/3/06]

NEW MEXICO SPEECH- LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.1 NMAC Sections 5, 7, and 8, effective 2/3/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.26.1.5 EFFECTIVE DATE: November 9, 1996, unless a later date is cited at the end of a section ~~[or paragraph]~~. [11/9/96; 11/7/98; 16.26.1.5 NMAC - Rn & A, 16 NMAC 26.1.5, 2/3/06]

16.26.1.7 DEFINITIONS:

A. "AAA" refers to the American academy of audiology, a national professional association of audiologists concerned with professional qualifications, standards of practice, ethics, scientific progress and continuing education.

B. "Act" means the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act [Sections 61-14B-1 to 61-14B-25 NMSA 1978] as it may be amended.

C. "Apprentice" means a paraprofessional working towards full licensure as a speech-language pathologist who provides adjunct services, is not actively engaged as clinical fellow and meets the education, employment and supervisory requirements as set forth in these regulations.

D. "ASHA" refers to the American speech-language and ~~[audiology]~~ hearing association, a national professional association of speech-language pathologists and audiologists recognized by the secretary of the U.S. department of education for the accrediting of university graduate degree programs in audiology and speech-language pathology. ASHA also maintains a professional membership of speech-language pathologists and audiologists concerned with professional qualifications, standards of practice, ethics, scientific progress and continuing education. Subsection C of Section 61-14-B-2 NMSA 1978.

E. "Audiologist" means a person holding at least a master's degree in audiology issued prior to January 1, 2007, or a doctoral degree in audiology who engages in the practice of audiology who may or may not dispense hearing aids and who meets the qualifications set forth in the act.

F. "CFY plan" (clinical fellowship year plan) means a written plan submitted to the board outlining the duration of the CFY (up to a maximum of three years), amount and type of supervision of the clinical fellow and designates a CFY supervisor.

G. "Direct supervision" means on-site, in-view observation and guidance by a licensed professional in the applicant's field present (other than a paraprofessional or clinical fellow) during a therapy session with clients while an assigned activity is performed by support personnel.

H. "Indirect supervision" means those activities other than direct supervision conducted by a licensed professional (other than a paraprofessional or clinical fellow) that may include demonstration, record review, consultations, meetings and evaluation of audio or video-taped sessions.

I. "Jurisprudence exam-

ination” means the evaluation of knowledge of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act and these regulations, given as a requirement for licensure to all applicants.

J. “License” means a document identifying a legal privilege and authorization to practice within one of the categories established by the act. A license under this act is not transferable.

K. “Licensing year” means the period from January 31, of any year through January 30 of the next year; initial, renewed and reinstated licenses may be issued at any time set herein but shall expire on January 30 of the following year except as otherwise provided in these rules.

L. “NBC-HIS” means national board for certification in hearing instruments sciences.

M. “IHS” refers to the international hearing society, an international organization of persons in the hearing aid industry concerned with professional qualifications, standards of practice, ethics, scientific progress, and continuing education.

N. “Referral” means the process of directing or redirecting a customer or patient to a specialist, hearing aid dispenser, therapist or clinician for services or diagnosis.

O. “Student” means any person who is a full or part time student enrolled in an accredited college or university program in speech-language pathology, audiology or communication disorders.

P. “Temporary paraprofessional license” means a license issued to a person working towards full licensure as a speech-language pathologist and who provides adjunct speech-language pathology services under the supervision of a speech-language pathologist who is licensed under this act.

Q. “Temporary trainee permit” means a permit issued by the board to a person authorized to fit and dispense hearing aids only under the supervision of a sponsor as defined by these regulations. Temporary trainee permits will be issued for a one-year period and are non-renewable. [12/21/71; 2/5/80; 8/1/81; 8/4/81; 3/18/82; 10/21/91; 11/9/96; 11/7/98; 11/27/99; 16.26.1.7 NMAC - Rn & A, 16 NMAC 26.1.7, 2/3/06]

16.26.1.8 BOARD CREATED:

A. In order to insure the safety and welfare of the public served, the speech-language pathology, audiology and hearing aid dispensing practices board is appointed by the governor, and is to consist of ten members who have been New Mexico residents of at least five years:

- (1) two licensed speech-language pathologists;
- (2) two licensed audiologists;

(3) two licensed hearing aid dispensers;

(4) one licensed otolaryngologist; and

(5) three public members.

B. The licensed members of the board shall not hold any elected or appointed office in any related professional organization.

C. The public members of the board shall not be licensed as speech-language pathologists, audiologists, or hearing aid dispensers nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated.

D. The board shall develop rules and regulations and establish policy for the implementation of the act, and perform such other functions as may be necessary to carry out its functions. The members of the board serve at the pleasure of the governor.

E. The members of the board shall serve staggered three-year terms. The term of a member of the board shall end on the 30th day of June of the calendar year. Vacancies shall be filled for the unexpired term in the same manner as original appointments. No board member may serve more than two consecutive terms and board members shall serve until their replacements are appointed.

F. The board members shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act (Section 10-8-1 et seq., NMSA 1978) and shall receive no other compensation, perquisite or allowance for discharge of their duties as members.

G. ~~[A majority of board members serving]~~ At least 6 board members constitutes a quorum.

H. The board shall meet at least once a year. A meeting of the board may be called by any board member or board administrator. The board shall elect its own chairperson, and vice-chairperson annually, during the first meeting.

I. The board shall receive and investigate all public complaints alleging violations of this act, regulations and code of ethics. The board shall make determinations for appropriate disciplinary action.

J. Any member failing to attend three meetings after proper notice shall be automatically recommended for removal as a board member, unless excused by the board chair for one of the following reasons: personal or family illness, prearranged activities out of town, or good cause.

K. The board shall review the Open Meetings Act and adopt an open meetings resolution at the first meeting in each calendar year.

L. Except as provided herein and except as otherwise provided by law, all applications, pleadings, petitions and motions are matters of public record as of the time of filing with the board.

M. The board operates in compliance with the Inspection of Public Records Act Sections 14-2-1 through 14-2-16 NMSA 1978. The board administrator or designee is the custodian of the board's records. Individuals may make written requests to inspect the public records of the board. The request must include the name, address and phone number of the individual seeking access. Requests for access to public records will be processed in a timely manner. If the inspection is not permitted within 3 business days, the custodian will notify the individual requesting access to the records in writing and explain when the records will be made available. The board may provide copies of public records upon request and upon payment of a reasonable copying fee, except as may be ordered by a court of competent jurisdiction. No person shall remove original board documents from the board office. The board maintains files for all individuals. Information in an individual's file is a matter of public record except for the following:

(1) letters of reference;

(2) test scores;

(3) medical reports and/or records of chemical dependency, physical or mental examinations or treatment;

(4) complaints and investigative materials; and

(5) social security number.

N. If it is difficult or impossible for a member of the board to attend a meeting in person, the member may participate through a conference telephone if available. Each member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting.

[12/21/71; 3/18/82; 11/9/96; 11/7/98; 11/27/99; 16.26.1.8 NMAC - Rn & A, 16 NMAC 26.1.8, 2/3/06]

NEW MEXICO SPEECH- LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.4 NMAC Sections 1, 5, 8, 9 and 10, effective 2/3/06. This rule was also renumbered and reformatted to comply with current NMAC

requirements.

16.26.4.1 ISSUING AGENCY:

New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[11/9/96; 16.26.4.1 NMAC - Rn & A, 16 NMAC 26.4.1, 2/3/06]

16.26.4.5 EFFECTIVE DATE:

November 9, 1996, unless a later date is cited at the end of a section ~~[or paragraph]~~. [11/9/96; 11/7/98; 16.26.4.5 NMAC - Rn & A, 16 NMAC 26.4.5, 2/3/06]

16.26.4.8 ANNUAL RENEWAL OF LICENSES:

A. Section 8 requires all licensees except clinical fellows and apprentices to apply for license renewal on or before January 30 on the renewal forms supplied by the board office. The renewal requirements for clinical fellows and apprentices are set forth in Sections 9 and 10 of this part.

B. Licensees shall assume the total responsibility for:

(1) filing a current mailing address with the board office;

(2) completing the renewal form (the application must be signed by the licensee) and ensuring its delivery to the board office on or before January 30;

(3) enclosing ~~[a personal check/money order for]~~ the appropriate fee; and

(4) enclosing documentation of meeting continuing education requirements.

C. To assist in the renewal process, the board office will:

(1) mail renewal notices and the appropriate forms to the licensee's address of record on or before December 15; and

(2) mail renewed and reinstated licenses no later than 30 days from day of receipt of application, fees and appropriate documentation.

D. Expiration: All speech-language pathology, audiology and hearing aid dispensing licenses expire on January 30 of each year and renewal forms must be complete and postmarked no later than the expiration date or a late fee will be assessed without exception.

E. Grace period: There is a grace period permitted renewal of expired licenses which ends March 31 of the intended licensure year.

F. Renewal of license during the grace period ending March 31 of the intended license year will require a late fee. Individuals renewing during the grace period may not practice with the expired license.

G. If a licensee fails to renew within the grace period, the licensee

must reapply as a new applicant, meet all applicable requirements, meet CEU requirements and pay the application fee, renewal fee and late penalty fee.

H. Licensees shall be notified by the board office of all license expirations ten (10) days after the close of the grace period.

I. Timely renewal of license(s) is the full and complete responsibility of the licensee. Pursuant to Subsection C of 16.26.4.8 NMAC of these regulations, renewal forms are mailed to the licensee at address on record no later than December 15. If the renewal form is not received by the licensee within a reasonable time after December 15, it is the responsibility of the licensee to contact the board office. Non-receipt of the renewal form by the licensee will not exempt licensure expiration or late penalty fees.

[12/21/71; 2/5/80; 4/5/83; 11/9/96; 11/7/98; 11/27/99; 16.26.4.8 NMAC - Rn & A, 16 NMAC 26.4.8, 2/3/06]

16.26.4.9 RENEWAL OF CLINICAL FELLOW LICENSE:

The CFY must be completed within a maximum period of 36 consecutive months. Prior to or during the first twelve months an individual has his/her CF license, he/she must take and pass a nationally recognized examination in their field. Proof of passing this exam is required for renewing the CF license. Clinical fellowship licenses expire twelve months after initial licensure.

A. The clinical fellowship licenses shall be renewed on forms supplied by the board office and must be postmarked no later than the expiration date.

B. A late penalty fee will be assessed if the license is not renewed by the expiration date.

C. If a licensee fails to renew within sixty (60) days, the licensee must reapply, meet all applicable requirements, meet CEU requirements and pay the application fee, renewal fee and late penalty fee.

[11/7/98; 16.26.4.9 NMAC - Rn & A, 16 NMAC 26.4.9, 2/3/06]

16.26.4.10 RENEWAL OF TEMPORARY PARAPROFESSIONAL LICENSE (APPRENTICE IN SPEECH-LANGUAGE PATHOLOGY):

A. All temporary paraprofessional licensees shall apply for license renewal on or before July 30th and are required to provide the following documentation to the board each year:

(1) a completed board approved license application form, signed in the presence of a notary public;

(2) the required license renewal fee; and

(3) a completed board approved verification of employment form verifying:

(a) licensee's employment;

(b) performance responsibilities of the apprentice in speech-language;

(c) imitations on employment practices of the apprentice in speech-language license holder (apprentice in speech-language);

(d) provision for supervision by an SLP licensed according to this act.

(4) a completed board approved verification of education form verifying:

(a) course work completed in ~~[communicative]~~ communication disorders or other courses as outlined in the degree plan with a minimum GPA of 3.0;

(b) current degree plan once the licensee is admitted to a master's degree program; and

(c) copy of transcripts from college or university.

B. Expiration: All temporary paraprofessional licenses expire on July 30th of each year and renewal of licenses must be postmarked no later than the expiration date or a late fee will be assessed without exception.

C. A temporary paraprofessional license may not be renewed if the licensee has not been accepted into a master's degree program within two years of initial licensure.

D. If a licensee fails to renew within sixty (60) days, the licensee must reapply, meet all applicable requirements, meet CEU requirements and pay the application fee, renewal fee and late penalty fee.

~~[D.] E.~~ Temporary paraprofessional [licensees] license as an apprentice in speech-language is a terminal license and as such may be renewed no more than five times total.

[11/7/98; 11/27/99; 16.26.4.10 NMAC - Rn & A, 16 NMAC 26.4.10, 2/3/06]

NEW MEXICO SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.5 NMAC Sections 1, 5, 8, 9, 10 and 12, effective 2/3/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.26.5.1 ISSUING AGENCY:

New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[11/9/96; 16.26.5.1 NMAC - Rn & A, 16 NMAC 26.5.1, 2/3/06]

16.26.5.5 EFFECTIVE DATE: November 9, 1996, unless a later date is cited at the end of a section.

[11/9/96; 16.26.5.5 NMAC - Rn & A, 16 NMAC 26.5.5, 2/3/06]

16.26.5.8 CONTINUING EDUCATION PHILOSOPHY: Continuing education is one of the most important responsibilities of the speech-language pathologist, audiologist, and hearing aid dispenser. It is also a life-long process. A diversity of information related to speech-language pathology, audiology, and hearing aid dispensing regarding changing requirements, laws, and trends in the field is recommended to enhance the professional skills and development the speech-language pathologist, audiologist, and hearing aid dispenser. The responsibility of continuing education rests solely with the speech-language pathologist, audiologist, or hearing aid dispenser.

[11/9/96; 16.26.5.8 NMAC - Rn & A, 16 NMAC 26.5.8, 2/3/06]

16.26.5.9 CONTINUING EDUCATION REQUIREMENTS OF LICENSEES:

A. Continuing education is a prerequisite to annual license renewal. Each licensee must participate in professional education activities of at least ten (10) clock hours ~~[(50-60 minutes)]~~ every year. These continuing education hours must be in the field of his or her licensure, or in a related field if justified to the board office. The board office will consult with the board and/or with the New Mexico speech-language and hearing association (or similar statewide professional association) to resolve questions as to appropriate continuing education hours. Renewal of a license shall be contingent upon the fulfillment of the continuing education standards and the supplying of evidence thereof by the licensee. The board shall be the final authority on acceptance of any educational activity submitted by a licensee to meet the continuing education requirement.

B. Upon renewal or reinstatement of a license, a minimum of ten (10) clock hours of continuing education must be accrued within the twelve (12) months immediately preceding the license expiration date. A maximum of ten (10) clock hours accrued over the required number may be carried over to the next renewal period.

C. The number of continuing education hours required for renewal of a license may be prorated by the board office.

(1) A newly licensed indi-

vidual or a person who reinstates his or her license and whose next renewal date occurs less than twelve (12) months after the license is issued will be required to earn continuing education hours equivalent to one (1) hour per month each month the license is issued or reinstated to the last day of the renewal month up to a maximum of ten (10) clock hours.

(2) Any approved continuing education hours accrued prior to receiving a license during the year the license is issued can be applied toward the continuing education requirements.

D. Any person licensed as both a speech-language pathologist and an audiologist or hearing aid dispenser must fulfill the requirements of ten (10) clock hours of continuing education every year in the field in which they are actively practicing.

[2/5/80; 8/4/81; 11/9/96; 16.26.5.9 NMAC - Rn & A, 16 NMAC 26.5.9, 2/3/06]

16.26.5.10 CRITERIA APPLYING TO OFFER CONTINUING EDUCATION OPPORTUNITY:

A. The board or board office will approve professional education activities sponsored or approved by a national or state professional association of speech-language pathologists, audiologists and hearing aid dispensers.

B. All other proposed educational programs or seminars must be submitted to the board office prior approval.

C. Requests must be submitted in writing with appropriate fees to the board office at least ~~[thirty (30)]~~ sixty (60) days prior to the program. The board office shall give written notice of the approval or disapproval of the educational program or seminar within ~~[+5]~~ thirty (30) days of receiving the application.

D. The individual/organization requesting approval of an educational seminar or course must provide the board office with the following material:

(1) name of the seminar or course;
(2) sponsor;
(3) objective of the seminar or course;

(4) format and subjects of seminar or course;

(5) number of clock hours of study or continuing education units;

(6) method of verification of attendance or completion of self study program; and

(7) name and qualifications of faculty or institution material.

[4/5/83; 11/9/96; 16.26.5.10 NMAC - Rn & A, 16 NMAC 26.5.10, 2/3/06]

16.26.5.12 CONTINUING EDUCATION AUDIT: The board reserves the right to question an individual regarding

continuing education submitted.

A. If audited, the licensee must provide a statement indicating how a continuing education activity has enhanced the licensee's scope of practice.

B. If the continuing education record is audited and the documents of verification of attendance are found to be falsified, incomplete, or if there is any question of accuracy, the licensee must submit other verification of attendance and/or correct the discrepancies before the last day of the renewal month to avoid ~~[the license expiring and thereby causing]~~ license expiration and thereby assessment of the additional late penalty fee prior to reinstatement [to be assessed].

[11/9/96; 16.26.5.12 NMAC - Rn & A, 16 NMAC 26.5.12, 2/3/06]

NEW MEXICO SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.6 NMAC Sections 1, 2, 3, 5, 6 and 8, effective 2/3/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.26.6.1 ISSUING AGENCY: New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[11/9/96; 16.26.6.1 NMAC - Rn & A, 16 NMAC 26.6.1, 2/3/06]

16.26.6.2 SCOPE: All those individuals who wish to make application and practice speech-language pathology, ~~[audiologist]~~ audiology or hearing aid ~~[dispenser]~~ dispensing or individuals working towards their clinical fellowship, paraprofessionals as defined in these regulations, and hearing aid dispensing trainees who will be offering services in the speech-language pathology, audiology or hearing aid dispensing field in the state of New Mexico. All individuals or groups wishing to offer continuing education courses.

[11/9/96; 16.26.6.2 NMAC - Rn & A, 16 NMAC 26.6.2, 2/3/06]

16.26.6.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing ~~[Practice]~~ Practices Act, Sections 61-14B to 61-14B-25 NMSA 1978 and Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.

[11/9/96; 11/7/98; 16.26.6.3 NMAC - Rn & A, 16 NMAC 26.6.3, 2/3/06]

16.26.6.5 EFFECTIVE DATE:
November 9, 1996, unless a later date is cited at the end of a section [~~or paragraph~~].
[11/9/96; 11/7/98; 16.26.6.5 NMAC - Rn & A, 16 NMAC 26.6.5, 2/3/06]

16.26.6.6 OBJECTIVE:
Pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing [~~Practice~~] Practices Act, Part 6 establishes fees application, licensure, renewal, late penalty fees, exams, processing continuing education offerings, administrative fees, labels, mailings, etc., the practice of speech-language pathology, audiology and hearing aid dispensing.
[12/21/71; 11/9/96; 16.26.6.6 NMAC - Rn & A, 16 NMAC 26.6.6, 2/3/06]

16.26.6.8 FEES: All fees are payable to the board and are non-refundable. Fees are as follows:

Initial [license] fee		Renewal fee	
A.	Hearing aid dispenser		
[trainees] <u>trainee</u> temporary permits includes hearing aid practical and written exam		\$300.00	
B.	Temporary paraprofessional license (apprentice)	\$50.00	
C.	Clinical fellow license	\$50.00	\$50.00
D.	Speech-language [pathologists and audiologists] <u>pathologist and audiologist</u> license	\$100.00	\$65.00
E.	Hearing aid dispensers	\$175.00	\$150.00
F.	Hearing aid practical, and written exams	\$200.00	
G.	Endorsement to dispense hearing aids	\$100.00	\$85.00
H.	Processing continuing education offerings per offering	\$35.00	
I.	Late renewal fee	\$50.00	
J.	All application packet fees	\$10.00	
K.	Dual licensure (SLP/audiology)	\$200.00	\$110.00
L.	<u>Verification of licensure</u>	\$10.00	
M.	<u>Paper list</u>	\$100.00	
N.	<u>Mailing labels</u>	\$125.00	
O.	<u>Electronic list</u>	\$150.00	
P.	<u>Duplicate license</u>	\$10.00	
Q.	<u>Insufficient funds</u>	\$25.00	

[10/25/91; 11/9/96; 11/7/98; 11/27/99;

16.26.6.8 NMAC - Rn & A, 16 NMAC 26.6.8, 2/3/06]

NEW MEXICO SPEECH- LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.7 NMAC Sections 1, 5, and 8, effective 2/3/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.26.7.1 ISSUING AGENCY:
New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.

[11/7/98; 16.26.7.1 NMAC - Rn & A, 16 NMAC 26.7.1, 2/3/06]

16.26.7.5 EFFECTIVE DATE:
November 7, 1998, unless a later date is cited at the end of a section [~~or paragraph~~].
[11/7/98; 16.26.7.5 NMAC - Rn & A, 16 NMAC 26.7.5, 2/3/06]

16.26.7.8 DISCIPLINARY GROUNDS: In accordance with the provisions of the Uniform Licensing Act, the board may take disciplinary action if the board determines that the applicant or licensee has violated the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act or the boards regulations. The following shall subject the applicant or licensee to disciplinary action by the board.

A. Engaging in unprofessional conduct: Unprofessional conduct includes, but is not limited to, the following:

(1) violations of the principles of ethics or the ethical proscriptions as set forth in board regulations concerning its Code of Ethics (16.26.9 NMAC);

(2) committing a misdemeanor substantially related to the practice of speech language pathology, audiology or hearing aid dispensing or a misdemeanor involving moral turpitude; a certified copy of the record of conviction shall be conclusive evidence of conviction;

(3) for an audiologist or dispensing otorhinolaryngologist to accept a case referred from a hearing aid dispenser and not return the case to the referring professional unless the person seeking the hearing aid refuses to return to the referring professional or if the professional determines, using his best professional judgement, the return of the case would not be in the person's best medical or audiological interest.

B. Engaging in acts that constitute incompetence: Incompetence includes, but is not limited to, the following:

(1) failure to possess the knowledge, apply the skill or provide the care required by generally accepted standards of the professions of speech-language [~~pathologists, audiologists or hearing aid dispensers~~] pathology, audiology or hearing aid dispensing; or

(2) violation of the principles of ethics II or the ethical proscriptions thereunder as set forth in board regulations relating to professional competence (Subsections D and E of 16.26.9.8 NMAC);

(3) a finding of incompetence may be based upon a single act or omission of competence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence.

C. Violation of the Controlled Substances Act (Sections 30-31-1 to 30-31-41 NMSA 1978). A certified copy of the record of conviction shall be conclusive evidence of conviction.

D. Aiding or abetting the practice by a person not licensed by the board. Aiding or abetting the practice of speech language pathology by a person not licensed by the board includes, but is not limited to, the following.

(1) A licensee shall not authorize or otherwise permit a speech language paraprofessional or assistant working under his or her supervision to diagnose, conduct diagnostic testing, interpret diagnostic testing, develop a plan of care or deviate from a plan of care.

(2) A licensee shall ensure that a speech language paraprofessional or assistant working under his or her supervision follows the plan of care.

(3) A licensee shall not authorize or otherwise permit an apprentice in speech-language pathology working under his or her supervision to conduct any of the duties set forth in Subsection E of [~~16.26.2.15~~] 16.26.2.18 NMAC of the boards rules and shall ensure that the apprentice only engages in those duties authorized in Subsection D of [~~16.26.2.15~~] 16.26.2.18 NMAC of the boards rules.

E. Failing to deliver to any person supplied with a hearing aid a receipt which contains the following information:

(1) licensee's license number and signature;

(2) the sponsor's/supervisor's signature approving of the fitting if the seller is a clinical fellow, graduate student or trainee;

(3) address of the licensee's regular place of business;

(4) make and model of the hearing aid;

(5) full financial terms of the sale;
 (6) statement as to whether the hearing aid is new, used or reconditioned;

(7) statement that the purchaser was advised that the licensee was not a licensed physician and that the examination and recommendation was made as a hearing aid dispenser, audiologist, clinical fellow, trainee or graduate student and not as a medical diagnosis or prescription;

(8) terms of guarantee, if any.
 [11/7/98, 11/27/99, 12/5/99; 16.26.7.8 NMAC - Rn & A, 16 NMAC 26.7.8, 2/3/06]

NEW MEXICO SPEECH- LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.8 NMAC Sections 1, and 5, effective 2/3/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.26.8.1 ISSUING AGENCY:
 New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.
 [11/7/98; 16.26.8.1 NMAC - Rn & A, 16 NMAC 26.8.1, 2/3/06]

16.26.8.5 EFFECTIVE DATE:
 November 7, 1998, unless a later date is cited at the end of a section [~~or paragraph~~].
 [11/7/98; 16.26.8.5 NMAC - Rn & A, 16 NMAC 26.8.5, 2/3/06]

NEW MEXICO SPEECH- LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.9 NMAC Sections 1, 5, and 8, effective 2/3/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

16.26.9.1 ISSUING AGENCY:
 New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.
 [11/9/96; 16.26.9.1 NMAC - Rn & A, 16 NMAC 26.9.1, 2/3/06]

16.26.9.5 EFFECTIVE DATE:
 November 9, 1996, unless a later date is

cited at the end of a section [~~or paragraph~~].
 [11/9/96; 11/7/98; 16.26.9.5 NMAC - Rn & A, 16 NMAC 26.9.5, 2/3/06]

16.26.9.8 CODE OF ETHICS:

A. The purpose of the Code of Ethics is to preserve high standards of integrity and ethical principles in the discharge of obligations to the public by the professions of speech-language pathologists, audiologists and hearing aid dispensers. Every individual who practices as a licensed speech-language pathologist, audiologist or hearing aid dispenser shall abide by the Code of Ethics. Any action that violates the Code of Ethics is to be considered unethical and subject to disciplinary action by the board. Failure of the code to specify any particular responsibility or practice is not to be construed as a denial of the existence of a responsibility or practice in that area. The rules of ethics are specific statements of minimally acceptable professional conduct or of prohibitions and are applicable to all licensed individuals. The fundamental rules of ethical conduct as they relate to responsibility to the public are described in three categories, principles of ethics, ethical proscriptions and matters of professional propriety.

(1) Principles of ethics: Six principles serve as a basis for the ethical evaluation of professional conduct and form the underlying moral basis for the Code of Ethics. Licensed individuals subscribing to this code shall observe these principles as affirmative obligations under all conditions of professional activity.

(2) Ethical proscriptions: Ethical proscriptions are formal statements of prohibitions that are derived from the principles of ethics.

(3) Matters of professional propriety: Matters of professional propriety represent guidelines of conduct designed to promote the public interest and thereby better inform the public and particularly the persons in need of service by the speech-language pathologist, audiologist and/or hearing aid dispenser as to the availability and the rules governing the delivery of these services.

B. [~~Principle~~] Principles of ethics 1: Individuals shall honor their responsibility to hold paramount the welfare of the persons they serve professionally.

(1) Licensed individuals shall use every resource including referral to other specialists as needed, to ensure that high quality service is provided.

(2) Licensed individuals shall fully inform the persons they serve of the nature and possible effects of the services rendered and products dispensed.

(3) Licensed individuals shall fully inform subjects participating in

research or teaching activities of the nature and possible effects of these activities.

(4) Licensed individuals shall evaluate the effectiveness of services rendered and of products dispensed and shall provide services or dispense products only when benefit can reasonably be expected.

(5) Licensed individuals shall maintain adequate records of professional services rendered and products dispensed and shall provide access to those records when appropriately authorized.

(6) Licensed individuals shall use persons in research or as subjects of teaching demonstrations only with their fully informed consent.

(7) Licensed individuals' fees shall be commensurate with services rendered.

(8) Licensed individuals shall take all reasonable precautions to avoid injury to persons in the delivery of professional services.

(9) Licensed individuals whose services are adversely affected by substance abuse [~~or~~] or other health-related conditions shall seek professional assistance and, where appropriate, withdraw from the affected area of practice.

C. Ethical [~~proscription~~] proscriptions:

(1) Licensed individuals shall not discriminate in the delivery of professional services on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

(2) Licensed individuals shall not guarantee the results of any treatment, procedure, or product, directly or by implication; however, they may make a reasonable statement of prognosis. Caution must be exercised not to mislead any person served professionally to expect results that cannot be predicted from sound evidence.

(3) Licensed individuals must not evaluate, treat, or dispense except in a professional relationship.

(4) Licensed individuals shall not evaluate, treat, or dispense solely by correspondence. This does not preclude follow-up correspondence with persons previously served, nor providing them with general information of an educational nature.

(5) Licensed individuals shall not reveal, without proper authorization any professional or personal information about the person served professionally, unless required to do so, or unless doing so is necessary to protect the welfare of the person or of the community.

(6) Licensed individuals must not charge for services not rendered.

(7) Licensed individuals must not exploit any person in the delivery of professional services, including accepting persons for treatment when benefit cannot reasonably be expected or continuing treatment

when it is no longer necessary.

D. Principles of ethics II: Licensed individuals shall maintain high standards of professional competence.

(1) Licensed individuals shall engage in those aspects of the professions that are within the scope of their licensed professional competence.

(2) Licensed individuals shall identify competent, dependable referral sources for persons served professionally.

(3) Licensed individuals shall insure that all equipment used in the provision of services is in proper working order and is properly calibrated.

(4) Licensed individuals shall continue their professional development.

(5) Licensed individuals shall possess appropriate qualifications for services provided.

E. Ethical proscriptions:

(1) Licensed individuals must not provide services by prescriptions from anyone who is not licensed pursuant to these regulations.

(2) Licensed individuals shall prohibit any of their staff from providing services that they are not licensed or qualified to perform.

(3) Licensed individuals must not require or delegate any service requiring professional competence and licensure of/to anyone who is not competent and licensed to engage in any practice that is a violation of the Code of Ethics.

(4) Licensed individuals must not offer clinical services by supportive personnel for ~~who~~ whom they do not provide appropriate supervision and assume full responsibility.

(5) Licensed individuals shall not provide professional services without exercising independent professional judgement, regardless of referral source or prescription.

F. Principles of ethics III:

(1) Licensed individuals shall honor their responsibility to the public by providing accurate information in all communications involving any aspect of professional service rendered.

(2) Licensed individuals' statements to the public - advertising, announcing, and marketing their professional services and products - shall adhere to prevailing and acceptable professional standards.

(3) Licensed individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, the products dispensed thereof, about the professions and about professional services.

G. Ethical proscriptions:

(1) Licensed individuals shall not misrepresent their credentials, competence, education, training, title, or experience.

(2) Licensed individuals shall not

misrepresent diagnostic information, services rendered, or products dispensed, or artifice to defraud in connection with obtaining payment or reimbursement for such services or products.

(3) Licensed individuals must not make public statements regarding professional services and products that contain representations or claims that are false, deceptive or misleading.

(4) Licensed individuals must not use professional or commercial affiliations in any way that would mislead or limit services to persons served professionally.

H. Matters of professional propriety: Licensed individuals should announce services in a manner consistent with highest professional standards in the community.

I. Principles of ethics IV:

(1) Licensed individuals shall maintain objectivity in all matters concerning the welfare of persons served professionally. Licensees who dispense products to the public shall observe the following standards.

(a) Products associated with professional practice must be dispensed as a part of a program of comprehensive habilitative care.

(b) Fees established for professional services must be independent of whether a product is dispensed.

(c) Persons served shall be provided freedom of choice for the source of services and products.

(d) Price information about professional services rendered and products dispensed must be disclosed by providing or posting a complete schedule of fees and charges in advance of rendering services, which differentiates between fees for professional services and charges for products dispensed.

(e) Products dispensed to the person served must be evaluated to determine effectiveness.

(2) Any person who practices the sale or fitting of hearing aids shall deliver to any person supplied with a hearing aid, a receipt that shall contain the licensee's signature, the address of the licensee's regular place of business and the number of his license. It shall also show the make and model of the hearing aid furnished along with the full terms of the sale clearly stated. If the hearing aid is not new, the receipt must clearly show whether the hearing aid is used or reconditioned, whichever is applicable in terms of any guarantee. The receipt shall also show that the purchaser was advised that the licensee was not a licensed physician and that the examination and recommendation was made as a hearing aid dispenser or fitter and not as a medical diagnosis or prescription.

J. Ethical proscriptions:

(1) Licensed individuals must not participate in activities that constitute a conflict of interest.

(2) Licensed individuals must not directly or indirectly give or offer to give money or anything of value to any person who advises another person in a professional capacity as an inducement to influence him/her or have him/her influence others to purchase or contract to purchase products sold or offered for sale by the licensee, or to refrain from dealing in the products of competitors.

K. Matters of professional propriety:

(1) Licensed individuals should not accept compensation for supervision or sponsorship from a supervised or sponsored individual.

(2) Individuals should present products they have developed to their colleagues in a manner consonant with highest professional standards.

L. Principles of ethics V: Licensed individuals shall honor their responsibilities to the professions and their relationships with members of allied professions.

M. Matters of professional propriety:

(1) Licensed individuals should seek to provide and expand services to persons with speech, language and hearing handicaps as well as assist in establishing high professional standards for such programs.

(2) Licensed individuals should educate the public about speech, language and hearing processes and handicaps, and matters related to professional competence.

(3) Licensed individuals should strive to increase knowledge within the professions and share research with colleagues.

(4) Licensed individuals should establish harmonious relations with colleagues and members of other professions and endeavor to inform members of the related professions of services provided by speech-language pathologists, audiologists and hearing aid dispensers.

(5) Licensed individuals should assign credit to those who have contributed to a publication in proportion to their contribution.

N. Principles of ethics VI:

(1) Licensed individuals shall uphold the dignity of the professions and freely accept the professional self imposed standards.

(2) Licensed individuals who have reason to believe that the Code of Ethics has been violated shall inform the board.

(3) Licensed individuals shall cooperate fully with the board in any inves-

tigation and adjudication of matters of professional conduct related to this Code of Ethics.

[8/4/81; 8/4/96; 11/9/96; 11/7/98; 16.26.9.8 NMAC - Rn & A, 16 NMAC 26.9.8, 2/3/06]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.2 NMAC, Sections 10 & 11, effective 1/17/06.

3.1.2.10 COOPERATIVE AGREEMENT EFFECTIVE DATE:

A. A cooperative agreement or an amended cooperative agreement entered into pursuant to Section 9-11-12.1 NMSA 1978 or Section 9-11-12.2 NMSA 1978, shall become effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the cooperative agreement or amended cooperative agreement is signed by both the pueblo or tribe and the secretary.

B. To be effective as of January 1, cooperative agreements or amendments to cooperative agreements must be executed by both the pueblo or tribe and the secretary on or before September 30 of the previous year. To be effective as of July 1, cooperative agreements or amendments to cooperative agreements must be executed by both the pueblo or tribe and the secretary on or before March 30 of the same year.

[3.1.2.10 NMAC - N, 6/15/04; A, 1/17/06]

3.1.2.11 SECRETARY MAY
DESIGNATE REPORTING REQUIRE-
MENTS OF SOME RECEIPTS: The secretary may require receipts from sales that occur on the tribal land of a pueblo or tribe that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 to be reported as located on tribal land regardless of where the taxpayer's place of business is maintained.

[3.1.2.11 NMAC - N, 1/17/06]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.4 NMAC, Section 13, effective 1/17/06.

3.1.4.13 REPORTING ACCORDING TO BUSINESS LOCA- TION

A. REPORTING ACCORDING TO BUSINESS LOCA- TION - GENERAL:

(1) Any person maintaining more

than one place of business in New Mexico and reporting under one identification number is required to report the taxable gross receipts for each location on a single CRS-1 form. Receipts from locations in each municipality or in each county outside a municipality where a place or places of business are maintained must be indicated separately on the CRS-1 form.

(2) A person who maintains multiple places of business in a single municipality or multiple places of business not within a municipality but within a single county and who reports under one identification number is required to combine the taxable gross receipts from these places of business, indicating the total taxable gross receipts derived from all locations in each municipality or county on the CRS-1 form.

(3) For persons engaged in the construction business, "place of business" includes each place where construction is performed.

(4) The "place of business" of a person who has no other place of business in New Mexico, but who has sales personnel who reside in New Mexico, includes each place where such personnel reside. Such persons are required to report gross receipts in the manner provided in Paragraphs 3.1.4.13A(1) and (2) NMAC. The place of business of a person who has no other place of business and does not have sales personnel who reside in New Mexico but who does have service technicians who perform service calls in New Mexico is "out of state", whether the service technicians live in New Mexico or elsewhere. For the purposes of Paragraph 3.1.4.13A(4) NMAC, a "service technician" is an employee whose primary work responsibility is the repair, servicing and maintenance of the products sold or serviced by the employer and whose sales activities are at most incidental.

(5) A person, other than an itinerant peddler, who is liable for the gross receipts tax and who has no "place of business" or resident sales personnel or other employees such as service technicians in New Mexico is required to indicate on the CRS-1 form that the business location is "out-of-state".

(6) A person is required to report receipts for the location where the place of business is maintained even though the sale or delivery of goods or services was not performed at or from the place of business, except as provided in Subsection J of this section. It should be noted, however, that each construction site, as indicated in Paragraph 3.1.4.13A(3) NMAC, is a "place of business" for this purpose.

(7) If a person has more than one place of business in New Mexico, the department will accept, on audit, this person's method of crediting sales to each

place of business, provided the method of crediting is in accordance with the person's regular accounting practice and contains no obvious distortion.

(8) Example 1: The X Company maintains its only place of business in Roswell, but sends its sales personnel to different cities in New Mexico to solicit sales and take orders. X is not required to report its gross receipts for each municipality in which its sales personnel are operating. X reports its gross receipts only for Roswell because its sole place of business is Roswell.

(9) Example 2: The Z Company maintains its only place of business in Grants. It makes deliveries in its own trucks to customers in various other cities within New Mexico. Z is not required to report its gross receipts for each municipality in which it makes deliveries. Z reports its gross receipts only for Grants. It is not maintaining a place of business in municipalities outside Grants solely because of its deliveries.

(10) Example 3: The W Furniture Company maintains its only office and showroom inside the city limits of Carrizozo. W's furniture warehouse is located outside the Carrizozo city limits. Furniture sold by W is, for the most part, delivered from its warehouse. W's "place of business" is in Carrizozo and it must report all its gross receipts for that municipality, regardless of the location of its warehouse.

(11) Example 4: The X Appliance Company maintains offices and showrooms in both Truth or Consequences and Las Cruces. The Truth or Consequences place of business initiates a sale of a refrigerator. The refrigerator is delivered from stock held in the Las Cruces place of business. X's place of business to which it credits the sale will be accepted on audit, if the crediting is in accordance with X's method of crediting sales in its regular accounting practice and contains no obvious distortion. If X credits the sale to its Truth or Consequences place of business, the department will accept Truth or Consequences as the location of the sale. The same result will occur if X credits the sale to its Las Cruces place of business.

B. REPORTING ACCORDING TO BUSINESS LOCA- TION - UTILITIES:

(1) Each municipality and the portion of each county outside a municipality in which customers of a utility are located constitute separate places of business. The physical location of the customer's premises or other place to which the utility's product or service is delivered to the customer is a business location of the utility.

(2) The department will accept, on audit, a utility's method of crediting its sales to its places of business, provided the

method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.

(3) For the purposes of Section 3.1.4.13 NMAC, "utility" means a public utility or any other person selling and delivering or causing to be delivered to the customer's residence or place of business water via pipeline, electricity, natural gas or propane, butane, heating oil or similar fuel or providing cable television service, telephone service or Internet access service to the customer's residence or place of business.

C. REPORTING BY PERSONS ENGAGED IN THE LEASING BUSINESS: A person from out of state who is engaged in the business of leasing as defined in Subsection E of Section 7-9-3 NMSA 1978 and who has no place of business or resident sales personnel in New Mexico is required to indicate "out-of-state" on the CRS-1 report form and to calculate gross receipts tax due using the tax rate for the state. An out-of-state person engaged in the business of leasing who has a place of business or resident sales personnel in New Mexico is required to report gross receipts for each municipality or area within a county outside of any municipalities in which the person maintains a place of business or resident sales personnel. An in-state person engaged in the business of leasing with more than one place of business is required to report gross receipts for each municipality or area within a county outside of any municipality in which the person maintains a place of business.

D. REPORTING TAXABLE GROSS RECEIPTS BY A PERSON MAINTAINING A BUSINESS OUTSIDE THE BOUNDARIES OF A MUNICIPALITY ON LAND OWNED BY THAT MUNICIPALITY: For the purpose of distribution of the amount provided in Section 7-1-6.4 NMSA 1978, persons maintaining a place of business outside the boundaries of a municipality on land owned by that municipality are required to report their gross receipts for that location. For the purpose of calculating the amount of state and local gross receipts tax due, such persons shall use the sum of the gross receipts tax rate for the state plus all applicable tax rates for county-imposed taxes administered at the same time and in the same manner as the gross receipts tax.

E. ITINERANT PEDDLERS - TEMPORARY BUSINESS LOCATIONS:

(1) An itinerant peddler is a person who sells from a nonreserved location chosen for temporary periods on a first-come, first-served basis. An itinerant peddler does no advertising or soliciting, has no

one employed to sell and is not employed as a salesperson.

(2) An itinerant peddler shall report taxable gross receipts by the municipality or the area of a county outside any municipality where the peddler maintains a place of business. If the itinerant peddler sells from only one location, that location shall be the place of business. If an individual peddler has no set sales location, the place of business shall be the peddler's temporary or permanent residence within New Mexico.

(3) Example: X occasionally places a blanket on a sidewalk in a town wherever X can find space for the blanket and sells homemade pies. X is an itinerant peddler because the space is not reserved specifically for X, it is chosen for temporary periods, and X is not employed nor does X have employees. Additionally, because X cannot be expected to be found regularly carrying on business at the same sidewalk location every day, X's place of business, for reporting purposes, is X's residence.

(4) Any person who pays a fee to occupy a particular location or space for a determined period of time and who sells any item or performs any service at that location is not an itinerant peddler and shall report that location as a place of business.

(5) Example: X pays \$50.00 to rent a space for a booth for two days during a festival. X is not an itinerant peddler because the space was assigned, and during the festival X could normally be expected to be found carrying on business at that place. X must therefore report the gross receipts from sales made during the festival to the location of the space.

(6) Any person who, in advance, advertises through print or broadcast media or otherwise represents to the public that the person will be at a particular location for a specified period of time and who sells property or performs service at that location shall report that location as a place of business.

(7) Example: X sells fish from a truck in a shopping center parking lot. X places an advertisement in the local paper informing the public where X will be located and the dates when X will sell fish at that location. X is not an itinerant peddler because X advertises and solicits business, and X can normally be expected to be found at that location during the time designated in the advertisement. The shopping center is X's place of business and X must report all activity occurring there to that location.

F. OBVIOUS DISTORTION: For purposes of Section 3.1.4.13 NMAC, obvious distortion shall be presumed whenever the method used to credit sales to a place of business treats similar transactions inconsistently. Any method

which intentionally credits sales to a location with a lower combined tax rate primarily for the purpose of reducing the taxpayer's total tax liability shall be presumed to contain obvious distortion, shall not be allowed and may be the basis of establishing intent to evade or defeat tax under the provisions of Section 7-1-72 NMSA 1978.

G. SPACE PROVIDED BY CLIENT CONSTITUTES BUSINESS LOCATION:

(1) Except as provided otherwise in Paragraph 3.1.4.13G(6) NMAC, any person performing a service who occupies space provided by the purchaser of the service being performed has established a business location if the following conditions are present:

(a) the space is occupied by the provider of the service for a period of six consecutive months or longer;

(b) the provider or employees of the provider of the service are expected, by the purchaser of the services or representatives of the purchaser, to be available at that location during established times; and

(c) critical elements of the service are performed at, managed or coordinated from the purchaser's location.

(2) The following indicia will be considered in determining if the above conditions are present:

(a) the provider of the service has assigned employees to the client's location as a condition of employment;

(b) telephone is assigned for the exclusive use by the service provider;

(c) the space has been designated for the use of the service provider;

(d) the space contains office furniture or equipment furnished by either the client or the service provider for the sole use of the service provider;

(e) the service provider is identified by business name on a sign located in or adjacent to the provided space;

(f) the client or other persons can expect to communicate, either in person or by telephone, with the service provider or employees or representatives of the service provider at the space provided by the client; and

(g) the contract between the client and the service provider requires the client to provide space to the service provider.

(3) Any person meeting the three conditions as evidenced by the listed indicia must report the receipts derived from the performance of the service at the client's location to the municipality or county in which the furnished space is located.

(4) Example 1: X has entered into a contract to perform research and development services for the army at a location on White Sands missile range within Doña Ana county. The term of the contract is one year

and is renewable annually. X is required by the contract to assign employees to the project at White Sands missile base on a full-time basis. The assigned employees consider White Sands as their place of employment. The army furnishes X with office and shop space as well as furniture and equipment. The space is identified as X's location by a sign containing X's business name at the main entrance to the assigned space. A specific telephone number has been assigned for X's exclusive use during the term of the contract. X shall report the receipts from services performed at the White Sands location under this contract using Doña Ana county as the location of business for gross receipts tax purposes.

(5) Example 2: Y has entered into a maintenance contract with a state agency to maintain and repair computer equipment. The state agency provides storage facilities to Y for the storage of equipment and parts which will be used by Y in the maintenance and repair of computer equipment. Y's employees are present at the location of the state agency only when required to repair the computers. The agency contacts Y at Y's regular place of business to report equipment problems and to request necessary repairs. On receipt of a request from the agency, Y dispatches an employee to the agency's location to repair the equipment. The location of the state agency does not constitute a separate business location for Y. Y shall report its receipts from the state agency under this contract to the location where Y maintains a regular place of business.

(6) The provisions of Subsection 3.1.4.13G NMAC do not apply when:

(a) the provider of the service is a co-employer or joint employer with the client of the employees at the client's location or has entered into a contract to provide temporary employees to work at the client's facilities under the client's supervision and control; and

(b) the provider of the service has no employees at the client's location other than employees described in Subparagraph 3.1.4.13G(6)(a) NMAC above.

H. REPORTING ACCORDING TO BUSINESS LOCATION - PERSONS SUBJECT TO INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX ACT:

(1) Each municipality and the portion of each county outside all municipalities in which customers of a person who is engaging in an interstate telecommunications business and who is subject to the interstate telecommunications gross receipts tax are located constitute separate places of business. Except for commercial mobile radio service as defined by 47 C.F.R. 20.3, the location of the person's customer is the location of the telephone sets, other

receiving devices or other points of delivery of the interstate telecommunications service.

(2) The department will accept, on audit, the person's method of crediting its sales to its places of business, provided the method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.

(3) This version of Subsection 3.1.4.13H NMAC applies to all interstate telecommunications gross receipts tax returns due after January 1, 2000.

**I. REPORTING
ACCORDING TO BUSINESS LOCATION - COMMERCIAL MOBILE RADIO SERVICE PROVIDERS:** For interstate telecommunications gross receipts tax returns due after January 1, 2000, each municipality and the portion of each county outside all municipalities in which customers of the provider of a commercial mobile radio service as defined by 47 C.F.R. 20.3 are located constitute separate places of business. With respect to the provision of commercial mobile radio service, the business location of a customer will be determined by the customer's service location. A customer's service location is determined first by the customer's billing address within the licensed service area. If the customer does not have a billing address within the licensed service area or if the customer's billing address is a post office box or mail-drop, then the customer's service location is the street or rural address of the customer's residence or business facility within that service area.

**J. TRANSACTIONS
ON TRIBAL TERRITORY:** The secretary may require a person selling or delivering goods or services to a tribal non-member on the tribal land of a tribe or pueblo that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 to report receipts based on the tribal location of the sale or delivery rather than the person's business location.

[3/5/70, 7/6/79, 11/20/79, 4/11/83, 11/5/85, 1/4/88, 8/22/88, 12/29/89, 8/15/90, 9/3/92, 2/22/95, 10/31/96, 7/30/99, 10/29/99; 3.1.4.13 NMAC - Rn & A, 3 NMAC 1.4.13, 12/29/00; A, 12/30/03; A, 1/17/06]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an emergency amendment to 11.4.12 NMAC, Sections 10 through 14, effective 12/23/05.

11.4.12.10 FINANCIAL RESPONSIBILITY OF EMPLOYER:

A. The employer shall pay claims, costs, interest and penalties for which it becomes obligated under the New Mexico Workers' Compensation Act, the Occupational Disease Disablement Law, and Uninsured Employers' Fund (UEF) Act.

B. Once UEF determinations of eligibility and compensability have been finalized by the UEF in worker's favor, the employer shall post an irrevocable letter of credit, a surety bond or other form of security as approved by the director in an amount of up to eighty thousand dollars (\$80,000.00) as determined by the UEF administrator on a form specified by the director or his designee.

(1) The security shall be issued in favor of the New Mexico uninsured employers' fund.

(2) The issuer of the surety bond or letter of credit shall not have a controlling interest over the employer nor shall the employer have a controlling interest over the issuer of the surety bond or letter of credit.

(3) The issuer of the surety bond or letter of credit shall have a rating that is within the parameters of acceptability set forth in an order published by the director.

(4) In the event of a default by an employer to reimburse the UEF as required by law, the security shall be used to reimburse the UEF for benefits paid to or on behalf of worker, costs incurred, statutory pre-judgment interest and statutory penalty.

(5) Upon finalization of eligibility and compensability determinations in worker's favor by the UEF, the fund administrator shall so notify the employer by certified mail/return receipt at the employer's last known business address. Should the employer fail or refuse to accept the certified notice, then, in such case, the employer will be notified by personal service of process.

(6) The employer shall have thirty (30) days from the date of receipt of the certified notice or notice by personal service within which to post the surety bond, letter of credit, or other form of security as approved by the director. The employer, within the same period of time, shall also provide proof of compliance to the director or his designee.

(7) If the employer defaults on the posting of security, the workers' compensation administration may seek injunctive relief to cease continued business operations of the employer.

[11.4.12.10 NMAC - N, 10/15/03; A, 11/15/04; N/E, 12/23/05]

11.4.12.11 CAP ON BENEFITS:

A. Notwithstanding the provisions of the Workers' Compensation Act and Occupational Disease Disablement Law, injured employees or an employee's

beneficiaries who pursue a claim for benefits from the uninsured employers' fund (UEF) are not guaranteed payment for full workers' compensation benefits from the UEF.

B. The liability of the state, the uninsured employers' fund and the state treasurer, with respect to payment of any compensation benefits, expenses, fees or disbursements properly chargeable against the UEF, is limited to the assets in the UEF, and they are not otherwise liable for any payment. In no case shall the liability of the UEF for payment of indemnity benefits to any worker injured in a job-related accident exceed forty thousand dollars (\$40,000.00) per job related injury or exceed forty thousand dollars (\$40,000.00) for payment of medical benefits per job related injury. If indemnity benefits do not amount to forty thousand dollars (\$40,000.00), any unused portion can be applied to payment of medical expenses, over and above the forty thousand dollar (\$40,000.00) limit for medical benefits.

[11.4.12.11 NMAC - N, 10/15/03; A, 11/15/04; N/E, 12/23/05]

~~[11.4.12.10]~~ **11.4.12.12 P E N A L - TIES COLLECTED FROM UNINSURED EMPLOYERS:** If the fund determines that an employer was obligated to pay workers' compensation benefits to or on behalf of a worker and has not done so due to its failure to obtain and keep in force a policy of workers' compensation insurance that is valid pursuant to the Workers' Compensation Act, the WCA director or his designee shall seek a penalty from the employer of not less than 115% and not more than 150% of all benefits paid to or on behalf of the worker. The determination of the appropriate percentage of penalty imposed shall be treated as a statutorily authorized discretionary act by a state agency, for purposes of judicial review. This penalty is separate from, and in addition, to any penalty or remedy sought against an uninsured employer pursuant to NMSA 1978, Sections 52-1-61 or 52-1-62 for failure to have insurance when required to do so. This penalty is intended to protect the health, safety and welfare of the citizens of the state of New Mexico and shall be considered a governmental penalty for purposes of the dischargeability provisions of the federal bankruptcy code.

A. Any final compensation order addressing the compensability of the workers' claim shall not be subject to collateral attack.

B. At any penalty hearing, the actual benefits provided to or on behalf of a worker or his dependants shall be presumed valid as the basis for the assessment of a penalty.

C. Billing and medical records in the possession of the WCA's claims adjustment contractor shall be considered records of the WCA for purposes of authentication.

D. No pre-hearing discovery or motions practice shall be permitted in penalty proceedings without specific authorization from the director's hearing officer, and for good cause shown.

E. Telephonic and videoconferencing shall be permitted to the extent permitted by law to facilitate the participation of the parties.

F. The WCA may use any legal process for collecting the penalty, including, but not limited to, reduction of the penalty to judgment in district court, seeking and obtaining writs of garnishment and execution, contempt citations or any other legal process in aid of collection and participating as a party in any bankruptcy action, including filing an involuntary petition in federal bankruptcy court to liquidate personal or business assets for the purpose of enforcing the penalty.

G. For the purposes of these actions, the WCA shall, at all times act pursuant to the commissions of its personnel as special assistant attorneys general. All proceedings before the WCA director for enforcement of the provisions of this section shall be conducted in accordance with 11 NMAC 4.5.

H. The fund may seek reimbursement of the costs of any legal action instituted in a proceeding to determine or collect a penalty pursuant to this subsection, but shall not seek reimbursement of legal fees, provided that the fund may collect reasonable attorneys fees to offset the fees incurred by the retention of outside counsel to collect any penalty.

[11.4.12.12 NMAC - Rn, 11.4.12.10 NMAC, 12/23/05]

~~[11.4.12.11]~~ **11.4.12.13 A S S E S S - M E N T S:**

A. The fiscal year of the fund coincides with the fiscal year of the state.

B. Beginning with the calendar quarter ending September 30, 2004, and for each calendar quarter thereafter, there is assessed against each employer who is required or elects to be covered by the Workers' Compensation Act a fee equal to two dollars thirty cents (\$2.30) per covered employee. Thirty cents per employee of the fee assessed against an employer shall be distributed to the credit of the uninsured employers' fund.

C. Penalties, pursuant to NMSA 1978, Section 52-1-61 for non-reporting, incorrect reporting or non-payment of assessments due shall accrue on a

monthly basis, with each month of noncompliance constituting a separate offense.

(1) Penalties pursuant to this provision shall be in addition to any penalties imposed by the New Mexico department of insurance or the New Mexico taxation and revenue department.

(2) The director may seek any remedy available under law for enforcement of penalties imposed pursuant to this provision.

(3) The respondent shall pay costs incurred to enforce penalties.

[11.4.12.13 NMAC - Rn, 11.4.12.11 NMAC, 12/23/05]

~~[11.4.12.12]~~ **11.4.12.14 M I S C E L - L A N E O U S P R O V I S I O N S**

A. The fund may purchase excess insurance from the fund corpus if, in the judgment of the director, it is fiscally prudent to do so.

B. Auditing of the fund by the superintendent of insurance shall occur yearly, commencing thirty (30) days after the close of the fund's fiscal year.

(1) The final report of the audit of the fund (after an opportunity to contest and respond to findings made by the auditor) shall be treated as a public document.

(2) In the event of any audit exceptions in the final report of the audit, the fund will issue a public statement of corrective actions that it will implement to prevent future exceptions.

(3) The fund shall comply with all requirements for the reporting of losses and claims expenditures for statistical purposes that would apply to a self-insured employer.

[11.4.12.14 NMAC - Rn, 11.4.12.12 NMAC, 12/23/05]

End of Adopted Rules Section

This page intentionally left blank.

Other Material Related to Administrative Law

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Director's Response to Public Comment UEF rules changes

The proposed amendments to the UEF rules were opened for public comment on October 19, 2005, for in person comment and through October 26, 2005, for written comment. Several comments were received from the public at the public hearing. One written comment was received.

One commentator expressed a concern for the impact of the revisions on the workers' compensation system. One of the reasons that the UEF was implemented is to stop the practice of pursuing an insured general contractor and, in some cases, their prior insurer, when an employee of an uninsured subcontractor was injured. Another reason was to hold the uninsured employer responsible. Claims will inevitably exceed \$25,000.00. It will impact health care providers, workers and their attorneys who will be motivated to pursue general contractors for coverage. Sometimes the worker is getting more medical treatment than is necessary and the WCA should investigate claims thoroughly because workers are not always employees.

Another commentator asked how the WCA came to the conclusion that it needed to cap the UEF and how many claims were filed and what the cost of the claims were. Further, the commentator questioned how many employers the WCA pursued for reimbursement. The WCA had 78 claims in the last full year with an average claim of \$39,000 per claim. The WCA has collected \$800,000 to \$900,000 in assessments and it is going after employers but there is a significant shortfall. The commentator asked if the \$39,000 is in reserves or in claims paid. This figure is reserves. There is \$1.5 million this fiscal year and the WCA projects \$1.1 million in claims in the coming year showing that claims outweigh the availability of money. The question was asked if claims will decrease over time. The WCA has no way of knowing this information. It is increasing collections and employees devoted to processing UEF claims by two. The commentator inquired if there was a particular industry group or groups that used or abused the UEF most and perhaps there could be outreach to that group. The claims are spread across many different industry groups without a concentration of claims in one particular industry. The WCA is increasing its efforts to reduce

the number of uninsured employers.

One speaker inquired why benefits were capped at \$25,000 since medicals usually exceed that amount and asked how the WCA came up with that figure. The WCA should be looking harder at whether the worker was truly employed at the time of injury. The statute recently passed concerning independent contractors is something the agency applies to its investigations. The intent of the proposed rule is to protect workers to make them financially secure by providing an income stream during the period the worker is unable to work. The commentator stated that eighty percent of a claim usually goes to medicals and twenty percent of benefits paid are usually indemnity benefits. The WCA did a statistical analysis that the \$5,000 would cover medicals in one-half of the claims made against the UEF and the \$20,000 would cover indemnity benefits in seventy percent of claims.

One speaker commented that the rate of indemnity and medical paid by his company were almost equal, with an average of \$14,900 being paid towards medical benefits and \$16,000 being paid in indemnity benefits. He suggested that we reconsider the ratios or buy reinsurance for bigger losses. That is cost prohibitive and, further, the rule allows for unused indemnity benefits to be applied towards medical benefits.

A different commentator commented that this rule lets the employer off the hook with paying only \$25,000 of a worker's total claim. Workers can still pursue employers for additional benefits and, further, the \$25,000 will still cover 75% of total claims. The WCA sends claims to its third-party administrator for a compensability determination and to set reserves. It will then notify the employer, who will then be required to post a bond based on the reserves. It is not limited to \$25,000 because there are associated attorney fees and costs. He asked whether the \$25,000 applied per accident if there are 2 or 3 workers involved in the same accident or it is applied per injury. The commentator objected to the fact that those workers may have to wait two years or more to settle their claim and, in the meantime, they will be pursued for unpaid medical bills. He stated that previous employers may have to pick up the tab and that workers can be taken advantage by employers with attorneys in tort. That possibility exists but one or two catastrophic injuries will wipe out the fund for the rest of the injured workers, who would get nothing. There is not enough money for all claims to

be paid fully. Either one or two workers get all the money or all of the workers get some of the money.

One commentator said that there should be significant enforcement efforts applied to finding uninsured employers. The WCA should stop uninsured employers. It should also ask for more money rather than limit benefits.

Another commentator asked why the WCA is letting uninsured employers keep working. All of the employers then have to pay for an increase in insurance rates and it is putting a burden on insured employers. There are better ways to resolve these issues. The WCA Employer Compliance Bureau receives referrals from the UEF and other sources. Employers are required to get and maintain coverage. If they do not, the WCA schedules a compliance hearing and if they do not get their coverage within the specified time, the WCA may seek a TRO. When a bond is not posted, the new rules allow the WCA to file for a TRO.

One of the same commentators asked if the WCA has assessed and collected penalties. The UEF has assessed and collected \$110,000 this year and it projects another \$300,000 in collections next year. It is increasing its collection efforts and trying to get to employers before an injury occurs.

One of the same commentators said that the new rule is building a two-tiered system where there are uninsured and insured employers. When an employer complies and gets insurance and they pay for all uninsured employers.

One commentator submitted a comment pertaining to the amendment at 11.4.12.9.F(3), stating that this provision was redundant and unnecessary and should be deleted from the rule. This comment was well-taken and this provision shall be removed from the rule.

After consideration of public comment and researching the impact to the workers' compensation system, the Workers' Compensation Administration will increase the amount of the cap to \$80,000 per injury, with \$40,000 being applied to indemnity benefits and \$40,000 applied to medical benefits. If indemnity benefits do not reach \$40,000, the remainder of this amount may be applied to medical benefits. The bond requirement will be increased to \$80,000.

The public record of this rulemaking shall incorporate this Response to Public

Comment and the formal record of the rule-making proceedings shall close upon execution of this document.

Alan M. Varela
Director
N.M. Workers' Compensation
Administration
December 22, 2005

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2006

Volume XVII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
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 3	April 14
Issue Number 8	April 17	April 28
Issue Number 9	May 1	May 15
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 3	July 17
Issue Number 14	July 18	July 31
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 18	September 29
Issue Number 19	October 2	October 16
Issue Number 20	October 17	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 29

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.