

**NEW  
MEXICO  
REGISTER**



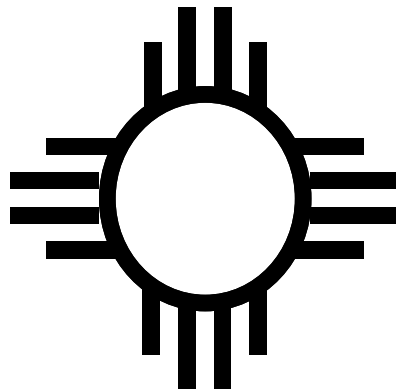
Volume XVII  
Issue Number 8  
April 28, 2006



# **New Mexico Register**

**Volume XVII, Issue Number 8**

**April 28, 2006**



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

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2006

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# New Mexico Register

Volume XVII, Number 8

April 28, 2006

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### 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.

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO DNA IDENTIFICATION SYSTEM OVERSIGHT COMMITTEE & ADMINISTRATIVE CENTER

NEW MEXICO DNA IDENTIFICATION  
SYSTEM OVERSIGHT COMMITTEE &  
ADMINISTRATIVE CENTER

NOTICE OF MEETING AND PUBLIC  
HEARING ON AMENDMENT OF  
RULES

Tuesday May 9, 2006, 11:00 AM,  
Criminalistics Conference Room,  
Metropolitan Forensic Science Center, 5350  
2<sup>nd</sup> Street NW, Albuquerque, NM 87107

To comment on, or for additional information including a copy of the agenda and proposed amendments, or if you have a disability and you require special assistance to participate in this meeting contact John Krebsbach, Chairperson at (505) 823-4630 by Monday May 8, 2006.

### NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

NEW MEXICO ECONOMIC  
DEVELOPMENT DEPARTMENT

#### NOTICE OF PROPOSED RULEMAKING

The Economic Development Department ("EDD" or "Department") hereby gives notice that the Department will conduct a public hearing as indicated to obtain input on the following two proposed rules:

The adoption of a new rule 1.2.4 NMAC (RULEMAKING PROCEDURES).

The adoption of a new rule 2.1.3 NMAC (STIMULATE ECONOMIC DEVELOPMENT).

A public hearing regarding both proposed rules will be held on May 29, 2006 in the Padilla Conference Room, New Mexico Economic Development Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico 87503. The time for the hearing on the proposed rules is 9:30 AM MDT.

Interested individuals may testify at either

public hearing or submit written comments regarding the proposed rulemaking to John Tull, General Counsel, New Mexico Economic Development Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico 87503 ([john.tull@state.nm.us](mailto:john.tull@state.nm.us)) (505) 476-2171 (telefax (505) 827-0328). Written comments must be received no later than 5:00 pm on May 1, 2006.

The proposed rulemaking actions may be accessed on the Department's website (<http://www.goNM.biz>) or obtained from Judy Sandoval, New Mexico Economic Development Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico 87503 ([judi.sandoval@state.nm.us](mailto:judi.sandoval@state.nm.us)) (505) 827-0307 (telefax (505) 827-0328).

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Judi Sandoval, contact information above, as soon as possible. The Department requests at least ten days advance notice to provide requested special accommodations.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS OF THE HAZARDOUS WASTE FEE REGULATIONS, 20.4.2 NMAC

The New Mexico Environmental Improvement Board (Board) will hold a public hearing on June 7, 2006 at 9:00 a.m. in the Event Center Meeting Room at the Lea County Event Center, located at 5101 Lovington Highway, Hobbs, New Mexico 88240. The purpose of the hearing is to consider the New Mexico Environment Department's proposed amendments to the Hazardous Waste Fee Regulations, 20.4.2 NMAC.

The proposed amendments of the Hazardous Waste Fee regulations would modify the definitions; annual fees; document types and review fees to include document review times; hearing fees; and procedures for payment. The proposed regulations would also be renamed the Hazardous Waste Permit and Corrective Action Fee Regulations. The amendments are provided for at NMSA 1978 Section 74-4-4.2.J (2003). The sections proposed for amendment include the following:

20.4.2.7	Definitions
20.4.2.200	Permit Application, Interim Status, Remedial Action Plan, and Corrective Action Fees
20.4.2.201	Hearing Fees
20.4.2.202	Fee Tables
20.4.2.203	Fee Calculation
20.4.2.300	Payment, Due Dates, and Appeals
20.4.2.400	Late Charges and Enforcement

All proposed amendments and other documents related to the hearing may be reviewed during regular business hours in the office of the Boards and Commissions:

Joyce Medina, Board Administrator  
NMED Boards and Commissions  
Harold Runnels Building, 1190 St. Francis Drive, N2153  
Santa Fe, New Mexico, 87502  
(505) 827-2425, Fax (505) 827-2836  
[joyce.medina@state.nm.us](mailto:joyce.medina@state.nm.us)

The proposed regulations have been posted to the New Mexico Environment Department webpage at [http://www.nmenv.state.nm.us/hwb/draft\\_rev\\_fee\\_reg.html](http://www.nmenv.state.nm.us/hwb/draft_rev_fee_reg.html) under Proposed Fee Regulations and Related Documents. Parties interested in receiving a hardcopy should contact Mr. John Kieling by e-mail at [john.kieling@state.nm.us](mailto:john.kieling@state.nm.us) or by phone at (505) 428-2500.

The hearing will be conducted in accordance with the Hazardous Waste Act, Section 74-4-5 NMSA 1978, the Rulemaking Procedures - Environmental Improvement Board, 20.1.1 NMAC, and other applicable procedures. A copy of the Rulemaking Procedures for the Board may be obtained from Ms. Medina; they are also available on the Board's web page

at <http://www.nmenv.state.nm.us/eib/regulations.htm>

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Written comments regarding the proposed amendments may be addressed to Ms. Joyce Medina at the above address, and should reference docket number **EIB 06-01 (R)**.

Any person who intends to present technical testimony at the hearing shall file a notice of intent to present technical testimony. The notice of intent shall:

- \* identify the person for whom the witness(es) will testify;
- \* identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- \* summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- \* include the text of any recommended modifications to the proposed regulatory change; and
- \* list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than **5:00 p.m. on May 22, 2006** and should reference the name of the regulation, the date of the hearing, and docket number **EIB 06-01 (R)**. Notices of intent to present technical testimony should be submitted to Ms. Joyce Medina at the address above.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by May 26, 2006, at the New Mexico Environment Department, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331. Copies of the proposed amendments will be available in alternative forms, e.g. audiotape, if requested by May 22, 2006.

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal. The Board may make changes to the proposed regulations based upon the administrative record, comments, or evidence considered at the hearing.

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO 20.7.10 NMAC, "DRINKING WATER": SECTION 7, DEFINITIONS; SECTION 100, ADOPTION OF 40 CFR PART 141; SECTION 101, ADOPTION OF 40 CFR PART 143; SECTION 102, REFERENCES; SECTION 103, AVAILABILITY OF REGULATIONS AND MATERIALS INCORPORATED BY REFERENCE; SECTION 200, PUBLIC WATER SYSTEM PROJECTS; SECTION 201, APPLICATIONS FOR PUBLIC WATER SYSTEM PROJECT APPROVAL; SECTION 300, COMPLIANCE; EMERGENCY POWERS; SECTION 400, GENERAL OPERATING REQUIREMENTS; SECTION 500, SAMPLING REQUIREMENTS; AND SECTION 600, PUBLIC NOTIFICATION**

The New Mexico Environmental Improvement Board (Board) will hold a public hearing on July 6, 2006 at 9:00 a.m. at the State Capitol Building, Rm. 311, Santa Fe, New Mexico. The purpose of the hearing is to consider amendments to drinking water regulations at 20.7.10 NMAC, Sections 7, 100, 101, 102, 103, 200, 201, 300, 400, 500 and 600. The New Mexico Environment Department (Department) is the proponent of these regulations.

The Department has proposed amendments to the Environmental Improvement Board that address, (1) changes to the definition section to update, streamline and simplify the regulations, (2) adoption of 40 CFR Parts 141 and 143 as of the July 1, 2004 version, (3) updating guidance documents, (4) modifying regulations for public water system projects, general operating requirements, sampling requirements and public notification. EPA requires many of these changes to permit New Mexico to maintain primacy for enforcement and administration of the Safe Drinking Water Act.

The department will also request two additional modifications to the amendments it

has previously proposed. First, it will request adoption of 40 CFR Parts 141 and 143 as of the July 1, 2005 version. Second, the department will request adoption of two federal regulations just issued by the Environmental Protection Agency in January 2006. These two regulations are: Stage 2 Disinfectants and Disinfection Byproducts Rule, 71 Fed. Reg. 388 (Jan. 4, 2006) (to be codified at 40 CFR Parts 9, 141, and 142) and Long Term 2 Enhanced Surface Water Treatment Rule, 71 Fed. Reg. 654 (Jan 5, 2006) (to be codified at 40 CFR Parts 9, 141, and 142).

Please note formatting and minor technical changes in the rules may occur. In addition, the Board may make other amendments as necessary to accomplish the purpose of providing public health and safety in response to public comments submitted to the Board and evidence presented at the hearing.

The proposed regulations may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153, Santa Fe, NM, 87505. Copies of the proposed regulations may be obtained by contacting Joyce Medina at (505) 827-2425 or by email at [joyce.medina@state.nm.us](mailto:joyce.medina@state.nm.us). Please refer to Docket No. EIB 05-13(R). The proposed regulations can also be found on the New Mexico Environment Department website at <http://www.nmenv.state.nm.us>. Written comments regarding the proposed regulations may be addressed to Ms. Medina at the above address, and should reference docket number EIB 05-13(R).

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

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the



person intends to present and state the qualifications of the witness, including a description of their education and work background;

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

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

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

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on June 21, 2006, and should reference the name of the regulation, the date of the hearing, and docket number EIB 05-13(R). Notices of intent to present technical testimony should be submitted to:

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

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by June 21, 2006, at the New Mexico Environment Department, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331. Copies of the proposed amendments will be available in alternative forms, e.g. audiotape, if requested by June 21, 2006.

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

**NEW MEXICO GENERAL SERVICES DEPARTMENT  
RISK MANAGEMENT DIVISION**

**NOTICE OF PUBLIC HEARING**

The Risk Management Division of the New Mexico General Services Department will hold a public hearing on proposed rule 13.10.20 NMAC "Small Employer Health Care Coverage". The Hearing will be held at 9:00 a.m. on Wednesday, May 31, 2006, at 1100 South Saint Francis Drive, Santa Fe,

New Mexico in the RMD Legal Bureau Conference Room, Suite 1004 on the first floor in the Joseph Montoya Building.

The public hearing will be conducted to receive the presentation of views from interested persons with respect to the rules governing the implementation and administration of the Small Employer Health Care Coverage program that has been established pursuant to state statutory law, NMSA 1978, § 10-7B-6.1.

Copies of the proposed rule can be obtained from:

Printed Copy

David Dayog Black, Attorney  
GSD Risk Management Division  
Joseph Montoya Building  
1100 South Saint Francis Drive, First Floor,  
Room 1004, Santa Fe, New Mexico 87505-4147

Mailing Address:

P.O. Drawer 26110, Santa Fe, New Mexico 87502-0110  
(505) 827-0537 Fax (505) 827-0593  
Email david.black@state.nm.us

Electronic Copy

An electronic version of the proposed rule can also be obtained from the website for the New Mexico General Services Department Risk Management Division at: <http://www.state.nm.us/gsd/rmd/>.

Written public comments regarding the proposed action must be submitted to the attention of David Dayog Black at the above "Printed Copy" physical or mailing address, fax number, or email address. Written public comments must be received on or before 5:00 p.m. on the date of the public hearing, May 31, 2006.

If you are an individual with a disability who is in need of special assistance or reasonable accommodations to attend or participate in the hearing, please contact paralegal Olga Lujan at the Legal Bureau of the GSD Risk Management Division at (505) 827-0551 / fax (505) 827-0593. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO HOISTING OPERATORS LICENSURE EXAMINING COUNSEL**

**LEGAL NOTICE**

**Public Rule Hearing**

The New Mexico Hoisting Operators Licensure Examining Council will hold a

Rule Hearing on the following Wednesday, May 31, 2006 - 9:00 am to 12: 00 noon at the Construction Industries Division-5200 Oakland Avenue NE-Albuquerque, NM 87113

The purpose of the rule hearing is to consider adoption of a proposed amendment to the Rules and Regulations in Article 15 - Hoisting Operations Safety Act.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Hoisting Program located at 5200 Oakland Avenue NE in Albuquerque, New Mexico 87113 after May 17, 2006. Persons wishing to present their comments at the hearing will need (12) copies of any comments or proposed changes for distribution to the Board and staff.

If you have any questions, or if you are an individual with a disability who wishes to attend the hearings, but you need a reader, amplifier, qualified sign language interpreter, any form of auxiliary aid or service to participate, please call Carmen Gomez, Executive Director at (505) 222-9809 at least two weeks prior to the meetings or as soon as possible.

Carmen Gomez  
Executive Director  
5200 Oakland Avenue NE  
Albuquerque, NM 87113

**NEW MEXICO REGULATION AND LICENSING DEPARTMENT  
ALCOHOL AND GAMING DIVISION**

Notice of Public Rule Hearing

Notice is hereby given that the New Mexico Regulation and Licensing Department, Alcohol and Gaming Division will convene a rule hearing to amend the following rules and regulations:

- Title 15 NMAC Chapter 10, Part 51 - Restriction on Sales
- Title 15 NMAC Chapter 10, Part 61 - Fines and Penalties
- Title 15 NMAC Chapter 11, Part 22 - Renewal and Suspension

The hearing will be held at the Rio Grande Conference Room on June 3, 2006 at 7:00 p.m., Regulation and Licensing Department, Toney Anaya Building, West Capital Complex, 2550 Cerrillos Road, Santa Fe, New Mexico 87505.

The purpose of the rule hearing is to solicit public comment on adoption of the proposed amendments to the rules and regulations. The Alcohol and Gaming Division will consider adoption of the proposed rules after June 3, 2006. Copies of the proposed rules are available upon request by contacting the Alcohol and Gaming Division Office, 2550 Cerrillos Road, 2<sup>nd</sup> Floor. Copies may also be requested via email at [www.agdrules.hearing@state.nm.us](mailto:www.agdrules.hearing@state.nm.us), or via U.S. mail at Alcohol and Gaming Division, P. O. Box 25101, Santa Fe, NM 87504-5101. The proposed rules may also be downloaded at [www.rld.state.nm.us/agd](http://www.rld.state.nm.us/agd).

Anyone wishing to present their views on the proposed amendments may appear in person at the hearing, or may send written comments to the Alcohol and Gaming Division. All written comments must be received by 5:00 p.m., Monday June 5, 2006 for consideration by the Alcohol and Gaming Division Director.

Individuals with a disability who wish to attend the rule hearing and are in need of reasonable accommodations should contact Annette Rodriguez at (505) 476-4548 no later than May 30, 2006.

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

**TITLE 8                    SOCIAL SERVICES**  
**CHAPTER 11            ADULT    PROTEC-**  
**TIVE SERVICES**  
**PART 6                    EMPLOYEE ABUSE**  
**REGISTRY**

**8.11.6.1                ISSUING AGENCY:**  
Aging and Long-Term Services  
Department.  
[8.11.6.1 NMAC - N, 4/28/2006]

**8.11.6.2                SCOPE:** This rule applies to a broad range of New Mexico providers of health care and services and employees of these providers who are not licensed health care professionals or certified nurse aides. This rule requires that providers check with the registry and avoid employing any individual on the registry. This rule further requires listing employees with substantiated registry-referred abuse, neglect or exploitation on the registry, following an opportunity for a hearing. This rule supplements other pre-employment screening requirements currently applicable to health care providers, such as the requirement for criminal history screening of caregivers employed by care providers subject to the Caregiver Criminal History Screening Act, Sections 29-17-1 through 29-17-5 NMSA 1978 and that act's implementing rule, 7.1.9 NMAC. It also supplements requirements for pre-employment screening of certified nurse aides applicable to nursing facilities pursuant to 42 CFR Sections 483.75(e) and 488.335 and 16.12.20 NMAC. This rule does not address the consequences of abuse, neglect, or exploitation for which a provider, as distinguished from an employee, is responsible. This rule is meant to compliment department of health rule 7.1.12 NMAC.  
[8.11.6.2 NMAC - N, 4/28/2006]

**8.11.6.3                S T A T U T O R Y**  
**AUTHORITY:** This rule is adopted pursuant to the terms of Sections 9-23-6(E) and 28-4-6(B) NMSA 1978, the Adult Protective Services Act, Sections 27-7-1 through 27-7-31 NMSA 1978 and the Employee Abuse Registry Act, Sections 27-7A-1 through 27-7A-8 NMSA 1978.  
[8.11.6.3 NMAC - N, 4/28/2006]

**8.11.6.4                D U R A T I O N :**  
Permanent.  
[8.11.6.4 NMAC - N, 4/28/2006]

**8.11.6.5                EFFECTIVE DATE:**

April 28, 2006, unless a later date is cited at the end of a section.  
[8.11.6.5 NMAC - N, 4/28/2006]

**8.11.6.6                OBJECTIVE:** The objective of this rule is to implement the Employee Abuse Registry Act. The rule is intended to provide guidance as to the rights and responsibilities under the Employee Abuse Registry Act of providers, employees of providers, the department of health and the adult protective services division of the aging and long-term services department, and the public including recipients of care and services from providers.  
[8.11.6.6 NMAC - N, 4/28/2006]

**8.11.6.7                DEFINITIONS:**

**A.                    "Abuse"** means:

(1) knowingly, intentionally or negligently and without justifiable cause inflicting physical pain, injury or mental anguish, and includes sexual abuse and verbal abuse; or

(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person.

**B.                    "Adjudicated"** means with respect to a substantiated registry-referred complaint, a final determination by the secretary following a hearing, or by a court, that the employee committed abuse, neglect, or exploitation requiring the listing of the employee on the registry.

**C.                    "APS"** means the adult protective services division of the aging and long-term services department.

**D.                    "Behavioral change"** means an observable manifestation of psychological, emotional or mental harm, injury, suffering or damage, and includes, but is not limited to, crying, hysterical speech, or disruptions to sleeping, working, eating, speech, nonverbal communications, socially interacting, or other activities which were performed routinely before the harm, injury, suffering, or damage.

**E.                    "Complaint"** means a report of adult abuse, neglect or exploitation received by APS that falls within APS's mandate to investigate.

**F.                    "Custodian"** means the person assigned by the secretary of the department of health to maintain the registry in accordance with the Employee Abuse Registry Act.

**G.                    "Department"** means the aging and long-term services department.

**H.                    "Direct care"** means face-to-face services provided or routine and unsupervised physical or financial access to a recipient of care or services.

**I.                    "Employee"** means a person employed by or on contract with a provider, either directly or through a third party arrangement to provide direct care. "Employee" does not include a New Mexico licensed health care professional practicing within the scope of the professional's license or a certified nurse aide practicing as a certified nurse aide.

**J.                    "Exploitation"** means an unjust or improper use of a person's money or property for another person's profit or advantage, pecuniary or otherwise.

**K.                    "Investigation"** means a systematic fact finding process that has as its goal the gathering of all information relevant to making a determination whether an incident of abuse, neglect or exploitation occurred.

**L.                    "Licensed health care professional"** means a person who is required to be licensed, and is licensed, by a New Mexico health care professional licensing board or authority, and the issuance of whose professional license is conditioned upon the successful completion of a post secondary academic course of study resulting in a degree or diploma, including physicians and physician assistants, audiologists, acupuncture practitioners, dentists, registered nurses, licensed practical nurses, chiropractors, pharmacists, podiatrists, certified nurse-midwife, nurse practitioners, occupational therapists, optometrists, respiratory therapists, speech language pathologists, pharmacists, physical therapists, psychologists and psychologist associates, dietitians, nutritionists and social workers.

**M.                    "Manager"** means the person designated by the secretary of the department of health to manage the employee abuse registry program pursuant to the Employee Abuse Registry Act.

**N.                    "Mental anguish"** means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these and includes a mental sensation of extreme or excruciating pain.

**O.                    "Neglect"** means, subject to a person's right to refuse treatment and subject to a provider's right to exercise sound medical discretion, the failure of an employee to provide basic needs such as clothing, food, shelter, supervision, protection and care for the physical and mental health of a person or failure by a person that may cause physical or psychological harm. Neglect includes the knowing and intentional failure of an employee to reasonably protect a recipient of care or services from nonconsensual, inappropriate or harmful

sexual contact, including such contact with another recipient of care or services.

**P. "Provider"** means an intermediate care facility for the mentally retarded; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a case management entity that provides services to elderly people or people with developmental disabilities; a corporate guardian; a private residence that provides personal care, adult residential care or natural and surrogate family services provided to persons with developmental disabilities; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services; programs funded by the children, youth and families department that provide homemaker or adult daycare services; and any other individual, agency or organization that provides respite care or delivers home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly, but excluding a managed care organization unless the employees of the managed care organization provide respite care, deliver home- and community-based services to adults or children with developmental disabilities or physical disabilities or to the elderly.

**Q. "Registry"** means the Employee Abuse Registry, an electronic database operated by the department of health that maintains current information on substantiated registry-referred employee abuse, neglect or exploitation, including the names and identifying information of all employees who, during employment with a provider, engaged in a substantiated registry-referred or an adjudicated incident of abuse, neglect or exploitation involving a recipient of care or services from a provider as established by department of health rule 7.1.12 NMAC.

**R. "Reporter"** means a person who or an entity that reports possible abuse, neglect or exploitation to APS.

**S. "Secretary"** means the secretary of the department.

**T. "Sexual abuse"** means the inappropriate touching of a recipient of care or services by an employee for sexual purpose or in a sexual manner, and includes kissing, touching the genitals, buttocks, or breasts, causing the recipient of care or services to touch the employee for sexual purpose, or promoting or observing for sexual purpose any activity or performance involving play, photography, filming or depiction of acts considered pornographic.

**U. "Substantiated"** means the verification of a complaint based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

**V. "Substantiated registry-referred"** means a substantiated complaint that satisfies the severity standard for referral of the employee to the registry.

**W. "Unsubstantiated"** means that the complaint's alleged abuse, neglect or exploitation did not or could not have occurred, or there is not a preponderance of reliable evidence to substantiate the complaint, or that there is conflicting evidence that is inconclusive.

**X. "Verbal abuse"** means profane, threatening, derogatory, or demeaning language, spoken or conveyed by an employee with the intent to cause pain, distress or injury, and which does cause pain, distress or injury as objectively manifested by the recipient of care or services.

[8.11.6.7 NMAC - N, 4/28/2006]

**8.11.6.8 REGISTRY ESTABLISHED; PROVIDER INQUIRY REQUIRED:** The department of health has established and maintains an accurate and complete electronic registry that contains the name, date of birth, address, social security number, and other appropriate identifying information of all persons who, while employed by a provider, have been determined to have engaged in a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider.

**A. Provider requirement to inquire of registry.** A provider, prior to employing or contracting with an employee, shall inquire of the registry whether the individual under consideration for employment or contracting is listed on the registry.

**B. Prohibited employment.** A provider may not employ or contract with an individual to be an employee if the individual is listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation of a person receiving care or services from a provider.

**C. Applicant's identifying information required.** In making the inquiry to the registry prior to employing or contracting with an employee, the provider shall use identifying information concerning the individual under consideration for employment or contracting sufficient to reasonably and completely search the registry, including the name, address, date of birth, social security number, and other appropriate identifying information required by the registry.

**D. Documentation of**

**inquiry to registry.** The provider shall maintain documentation in the employee's personnel or employment records that evidences the fact that the provider made an inquiry to the registry concerning that employee prior to employment. Such documentation must include evidence, based on the response to such inquiry received from the custodian by the provider, that the employee was not listed on the registry as having a substantiated registry-referred incident of abuse, neglect or exploitation.

**E. Documentation for other staff.** With respect to all employed or contracted individuals providing direct care who are licensed health care professionals or certified nurse aides, the provider shall maintain documentation reflecting the individual's current licensure as a health care professional or current certification as a nurse aide.

**F. Consequences of non-compliance.** The department of health or other governmental agency having regulatory enforcement authority over a provider may sanction a provider in accordance with applicable law if the provider fails to make an appropriate and timely inquiry of the registry, or fails to maintain evidence of such inquiry, in connection with the hiring or contracting of an employee; or for employing or contracting any person to work as an employee who is listed on the registry. Such sanctions may include a directed plan of correction, civil monetary penalty not to exceed five thousand dollars (\$5000) per instance, or termination or non-renewal of any contract with the department or other governmental agency.

[8.11.6.8 NMAC - N, 4/28/2006]

**8.11.6.9 COMPLAINTS:** Section 27-7-30 NMSA 1978 requires anyone reasonably suspecting adult abuse, neglect or exploitation to immediately file a complaint with APS. APS has established a centralized intake system for receiving such complaints. A complaint may be made orally or in writing. To the extent possible, a complaint shall include the following information: the name, age and address of the adult; the name and address of any other person responsible for the adult's care; the nature and extent of the adult's condition; the basis of the reporter's knowledge; and other relevant information.

[8.11.6.9 NMAC - N, 4/28/2006]

**8.11.6.10 COMPLAINT PROCESSING:** APS will investigate all complaints in accordance with its policies and procedures and render an investigative decision.

**A.** If a complaint relates to an employee of a provider that is not licensed by or covered under contract by the department of health, APS's investigative

decision shall indicate whether the allegations against the employee are:

- (1) unsubstantiated;
- (2) substantiated; or
- (3) substantiated registry-referred.

**B.** If a complaint relates to an employee of a provider that is licensed by or covered under contract by the department of health, APS shall not make a registry referral determination. APS's investigative decision shall simply indicate whether the allegations against the employee are:

- (1) unsubstantiated; or
- (2) substantiated.

**C.** Nothing in this section shall be interpreted as precluding APS from contacting any other government agency about a complaint, including but not limited to contacting the department of health and initiating a report, or contacting law enforcement or the attorney general or a district attorney's office for criminal prosecution.

[8.11.6.10 NMAC - N, 4/28/2006]

**8.11.6.11 SEVERITY STANDARD:** If a complaint relates to an employee of a provider that is not licensed by or covered under contract by the department of health, APS shall make a determination of the severity of substantiated complaints of abuse, neglect or exploitation for the purpose of deciding if the employee is to be referred for placement on the registry. The determination of the severity of the substantiated complaint of abuse, neglect or exploitation is based upon application of the severity standards in this section. A substantiated complaint that satisfies the severity standard in this section is a substantiated registry-referred complaint. A substantiated complaint that does not satisfy the severity standard in this section will not be referred to the registry. Severity is determined by assessing the impact of the substantiated abuse, neglect, or exploitation on the recipient of care or services, and by assessing the employee for aggravating factors.

**A. Abuse.** A substantiated complaint of abuse meets the severity standard if:

- (1) the abuse results in, or is a contributing factor to, death;
- (2) the abuse results in the infliction of a significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;
- (3) the abuse results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;
- (4) the abuse results in the infliction of excruciating pain or pain that

endures over a significant time period;

(5) the abuse causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral changes;

(6) the abuse is sexual abuse; or

(7) the abuse is verbal abuse that causes significant mental anguish, including psychological or emotional damage, and which is evidenced by significant behavioral changes or physical symptoms.

**B. Neglect.** A substantiated complaint of neglect meets the severity standard if:

(1) the neglect results in, or is a contributing factor to, death;

(2) the neglect results in the infliction of a significant, identifiable physical injury that reasonably requires or results in medical or behavioral intervention or treatment;

(3) the neglect results in any injury for which criminal charges are brought against the employee resulting in a plea or conviction;

(4) the neglect results in the infliction of excruciating pain or pain that endures over a significant time period; or,

(5) the neglect causes significant mental anguish as evidenced by the victim's descriptions, or significant behavioral changes.

**C. Exploitation.** A substantiated complaint of exploitation meets the severity standard where unjust or improper use of the money or property belonging to the recipient of care or services results in:

(1) a single instance of an objectively quantifiable loss, the value of which exceeds the lesser of either:

(a) twenty five dollars (\$25); or,

(b) twenty five percent (25%) of the monthly income available to the recipient of care or services for purchasing personal items or discretionary spending; or

(2) a subjectively substantial loss to the recipient of care or services due to a special attachment to the property, as demonstrated by anger, fear, frustration, depression or behavioral changes caused by the loss.

**D. Aggravating factors.** A substantiated complaint of abuse, neglect or exploitation meets the severity standard requiring referral of the employee for placement on the registry where:

(1) the employee used alcohol or a controlled substance at or near the time of the substantiated abuse, neglect or exploitation; or

(2) the employee used, brandished or threatened to use, a weapon in connection with the substantiated abuse, neglect or exploitation.

[8.11.6.11 NMAC - N, 4/28/2006]

**8.11.6.12 PROVIDER COOPERATION:** In accordance with Section 27-7-19 NMSA 1978 and as allowed by law or contract:

**A. Access to provider.**

The provider shall provide APS investigators with immediate physical access to the provider's entire facility or its service delivery sites. The investigators may require such access during any or all shifts.

**B. Access to provider records.** The provider shall provide APS investigators with immediate access to all information obtained as a result of the provider's own internal investigation of the matters that form the basis of the complaint, including but not limited to written statements, interviews, affidavits, physical items, medical information, electronic and computer data, and photographic information.

**C. Interviews.** APS investigators shall have a reasonable opportunity to conduct confidential interviews with any person who may have relevant information relating to the complaint, including employees and other staff including licensed health care professionals and certified nurse aides, other licensed health care professionals and other provider staff, recipients of care or services from the provider and their family members, guardians, health care decision makers and friends.

**D. Physical access to recipients of care and services.** The provider shall allow APS investigators reasonable access to individuals receiving care or services from the provider when such investigators announce that they are investigating a complaint. Such access may be telephonic or face-to-face.

**E. Access to the provider's records, patient trust accounts and patient property.** The provider shall provide APS investigators with immediate access to the provider's billing records, patient trust accounts, representative payee records, patient care and medical records, and patient property. In addition the provider must assure access to employee and personnel records, including documentation showing provider inquiry to the registry.

**F. Copying.** The access required to be provided to APS investigators includes copying paper documents and printing and copying electronic and computer records or data. Copied documents shall be retained in accordance with applicable state retention policies.

**G. Consequences of provider's denial of cooperation.** The department of health shall administer sanctions for a provider's failure to comply with the Employee Abuse Registry Act, includ-

ing failure to provide access as required herein to conduct investigations of complaints, and such sanctions include a directed plan of correction, a civil monetary penalty not to exceed five thousand dollars (\$5,000), or such sanctions as are available under applicable contract or licensing provisions. Pursuant to Section 27-7-30 NMSA 1978, any person interfering with an APS investigation is guilty of a misdemeanor.

[8.11.6.12 NMAC - N, 4/28/2006]

### 8.11.6.13 NOTIFICATION FOLLOWING INVESTIGATION:

**A. Notification to provider and employee.** If APS determines, following an investigation, that an instance of either substantiated or substantiated registry-referred employee abuse, neglect, or exploitation has occurred, then APS shall promptly notify the employee and the provider.

**B. Required information for substantiated registry-referred complaints.** The notice to the provider and employee for substantiated registry-referred complaints shall be by certified mail and shall include the following information:

- (1) the nature of the abuse, neglect, or exploitation;
- (2) the date and time of the occurrence;
- (3) whether the abuse, neglect or exploitation was the result of conduct by the employee, the provider or both;
- (4) the right to request a hearing, and the time and manner for requesting a hearing;
- (5) the fact that the substantiated registry-referred findings will be reported to the registry, once the employee has had an opportunity for a hearing; and
- (6) the failure by the employee to request a hearing in writing within thirty (30) calendar days from the date of the notice shall result in the reporting of the substantiated findings to the registry and the provider.

**C. Required information for substantiated complaints.** The notice to the provider and employee for substantiated complaints may be by mail or by email and shall include the following information:

- (1) the nature of the abuse, neglect, or exploitation;
- (2) the date and time of the occurrence;
- (3) whether the abuse, neglect or exploitation was the result of conduct by the employee, the provider or both;
- (4) the fact that the substantiated complaint was not sufficiently severe to warrant reporting the employee to the registry; and
- (5) the fact that the employee may not request a hearing.

**D. Unsubstantiated complaints.** Notice of a determination that an investigated complaint is unsubstantiated shall be mailed or emailed to the provider and employee following such determination.

**E. APS notification to the department of health.** APS shall notify the department of health of substantiated complaints of abuse, neglect and exploitation. APS shall also specifically notify the manager of substantiated registry-referred complaints of abuse, neglect and exploitation.

[8.11.6.13 NMAC - N, 4/28/2006]

### 8.11.6.14 HEARINGS :

Hearings are provided to employees by the department or the department of health, depending upon whether APS or the department of health made the registry referral determination. This section provides rules applicable to hearings held by the department.

**A. Request for hearing.** An employee may request an evidentiary hearing if the employee is notified that as a result of substantiated registry-referred findings of abuse, neglect, or exploitation the employee will be reported to the registry. The request for hearing shall be made to the department. A provider may not request a hearing pursuant to the Employee Abuse Registry Act. The following applies to hearings properly requested of the department.

(1) The request for a hearing shall be in writing and mailed or delivered to the Aging and Long-Term Services Department, Adult Protective Services Division, 625 Silver SW, Suite 400, Albuquerque, New Mexico 87102; or to an alternative address if set forth in the notice.

(2) The request for hearing shall include a copy of the notice.

(3) The request for hearing must be mailed or hand-delivered no later than thirty (30) calendar days after the date of the notice.

**B. Scheduling order.** The department, or the hearing officer, shall issue a scheduling order that sets the hearing at a location reasonably convenient for the employee and at a date and time reasonably convenient to the parties. The scheduling order shall establish deadlines for completion of discovery and provide for the filing of a confidentiality order. The hearing shall be scheduled within thirty (30) calendar days following the department's receipt of the request for hearing. Either party may request a continuance of the hearing for good cause. If a hearing is continued it shall be rescheduled at the earliest date and time available to the parties.

**C. Hearing officer.** The hearing will be conducted before an impar-

tial and independent hearing officer of the department. The hearing officer is not required to be an attorney. Upon appointment, the hearing officer shall establish an official file of the case. The hearing officer shall resolve all prehearing matters, including amendment of the scheduling order, schedule and conduct prehearing conferences, rule on prehearing motions, and resolve discovery disputes. The hearing officer will preside over the hearing and allow each party an opportunity to present its case, and shall resolve all motions, evidentiary issues and other matters as may be necessary. Within thirty (30) calendar days of the conclusion of the hearing the hearing officer will issue a report and recommended decision to the secretary.

**D. Parties.** The parties to the hearing are APS and the employee. Each party may be represented by an attorney.

**E. Confidentiality.** The hearing officer shall require the filing of an appropriate signed confidentiality order in which each party agrees to maintain and protect the confidentiality of all individually identifiable health information that is, or may be, used or disclosed at any time during the course of the entire proceeding in accordance with applicable state and federal law and regulations. Refusal or failure to sign an appropriate confidentiality order constitute grounds for denying discovery to the non-signing party, limiting the number and testimony of the non-signing party's witnesses, limiting the admission of evidence that discloses individually identifiable health information, and the imposition of other appropriate measures to limit the scope of disclosure of individually identifiable health information to the non-signing party.

**F. Discovery.**

(1) Exhibit and witness lists will be exchanged between the parties and provided to the hearing officer prior to the hearing by the parties in accordance with the scheduling order, any prehearing order, or by agreement of the parties. The witness list shall include a summary of the subject matter of the anticipated testimony of each witness listed.

(2) No depositions are allowed except by order of the hearing officer upon a showing that the deposition is necessary to preserve the testimony of persons who are sick or elderly, or persons who will not be able to attend the hearing. Pursuant to provisions in the scheduling order or upon agreement of the parties, and with the consent of the witness if the witness is not employed by the department or another governmental entity, a party may interview witnesses identified by the other party at a reasonable time and in a reasonable manner.

(3) Production of documents.

Upon request by the employee, APS shall provide a copy of the investigation to the employee. The parties may request the production of other relevant documents in accordance with the scheduling order or other discovery order.

**G. Hearing procedures.**

The hearing shall be closed to the public. The hearing officer shall conduct the hearing in an efficient and orderly manner that respects the rights of the parties to present their cases. The hearing officer shall maintain proper decorum and shall assure that all participants in the hearing are courteous to one another. The hearing officer is authorized to resolve motions and other disputes before and during the hearing.

(1) Recording. The hearing officer will cause a record to be made of the hearing and retained in the official file. Generally such record is made by use of commonly available audio recording technology. A log of the recording shall be maintained.

(2) Order of presentation at hearing. APS shall present its case, the employee shall present the employee's case, and APS may present its rebuttal case.

(3) Public. The hearing is a closed, nonpublic hearing.

(4) Evidence. The New Mexico Rules of Evidence do not apply, although they may be referred to for guidance as to type of evidence that may be admitted. Generally, evidence shall be admitted if it is of a type relied upon by reasonable persons in the conduct of important affairs. Proffered evidence may be excluded if it is not relevant, or is repetitious or cumulative.

(5) Telephonic testimony. Upon timely notice to the opposing party and the hearing officer and with the approval of the hearing officer, the parties may present witnesses by telephone, or live video.

(6) Recommended decision. The hearing officer shall issue a recommended decision to the secretary within (30) days of the closing of the hearing.

(7) The department shall maintain the official record of the hearing, which shall include the recommendation of the hearing officer and the secretary's adjudicated decision.

(8) The department shall make available to the custodian a copy of the official record of the hearing upon request.

**H. Secretary's decision.**

Within ten (10) business days of receipt of the hearing officer's recommendation, the secretary shall issue a final decision, and promptly provide the parties and the custodian with a copy. If the decision of the secretary finds that the employee was responsible for abuse, neglect or exploitation of sufficient severity for referral to the registry, it shall be the adjudicated decision of abuse,

neglect or exploitation.

**I. Judicial review.** An employee may appeal the secretary's adjudicated decision of abuse, neglect or exploitation to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. The custodian will enter the employee's name into the registry within two (2) working days following receipt of the adjudicated decision. The custodian shall promptly remove the employee from the registry upon the receipt of an order issued by the district court granting a stay pending the outcome of the appeal, or upon the receipt of a district court order reversing the adjudicated decision.

**J. Court of Appeals.** If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, notification shall be made to the custodian who shall promptly remove the employee from the registry. [8.11.6.14 NMAC - N, 4/28/2006]

**8.11.6.15 NOTIFICATION TO THE CUSTODIAN:** APS shall promptly provide all required employee information to the custodian of the final disposition of complaints of substantiated registry-referred abuse, neglect or exploitation after the occurrence of each of the following.

**A. No hearing requested.** The employee has not requested an administrative hearing within thirty (30) calendar days after the date of the notice to the employee following an investigation resulting in the determination of substantiated registry-referred abuse, neglect, or exploitation.

**B. Adjudication of abuse, neglect or exploitation.** The employee has not filed for review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978 after thirty (30) calendar days following the date of the final administrative adjudication decision of employee abuse, neglect or exploitation of sufficient severity for registry referral.

**C. Judicial decision.** Upon the receipt by APS of a district court order or decision sustaining the administrative adjudication decision of abuse, neglect or exploitation of sufficient severity for registry referral, if an employee seeks judicial review in the district court.

**D. Court of Appeals.** If the employee seeks review in the court of appeals by writ of certiorari, the employee shall remain on the registry, unless a stay is granted or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses, then notification shall be made to the custodian who shall

promptly remove the employee from the registry.

[8.11.6.15 NMAC - N, 4/28/2006]

**8.11.6.16 ENTRY ON THE REGISTRY:** The custodian shall provide the employee and the provider for whom the employee worked with notice of the employee's listing on the registry. The following employees will be listed on the registry by the custodian.

**A. No hearing requested.** Any employee determined to have committed substantiated registry-referred abuse, neglect or exploitation who does not request an administrative hearing within thirty (30) calendar days after the date of the notice to the employee.

**B. Adjudicated decision.** Any employee who, after thirty (30) calendar days following the date of an adjudicated decision of abuse, neglect or exploitation, has not filed for review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**C. Judicial decision.** Any employee for whom a district court has entered an order or decision sustaining an administrative adjudication of abuse, neglect or exploitation.

**D. Court of Appeals.** Any employee who seeks review in the court of appeals by writ of certiorari shall remain listed on the registry, unless a stay is granted pending the outcome of the case, or the court of appeals reverses the district court. If a stay is granted or the court of appeals reverses the district court, then the custodian shall promptly remove the employee from the registry.

[8.11.6.16 NMAC - N, 4/28/2006]

**8.11.6.17 REMOVAL FROM THE REGISTRY:** After a period of three years from the effective date of placement on the registry, an individual on the registry may petition the department of health for removal from the registry in accordance with the terms of department of health rule 7.1.12 NMAC.

[8.11.6.17 NMAC - N, 4/28/2006]

**8.11.6.18 CONFIDENTIALITY:** The department complies with all state and federal confidentiality requirements regarding information obtained in connection with the operation of the Employee Abuse Registry program, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

**A. Confidentiality of information.** Information obtained by APS involving incidents or situations of suspected abuse, neglect or exploitation is confidential, and is not subject to public inspection until completion of all investigations

and hearings, and then only to the extent specifically permitted by law and only such information that does not identify individuals who are receiving care or services from providers.

**B. Unsubstantiated complaints.** Complaints of suspected abuse, neglect or exploitation obtained by APS that are not substantiated following investigation are not public information, and are not subject to public inspection.

**C. Substantiated complaints.** Complaints of suspected abuse, neglect or exploitation obtained by APS that are substantiated following investigation are subject to public inspection only to the extent permitted by law and the disclosure may not include any identifying information about an individual who is receiving health care services from a provider.

**D. Permitted disclosures.** Nothing herein shall restrict an appropriate disclosure of information to the centers for medicare and medicaid services; nor shall any provision herein restrict disclosures to law enforcement officials, including the attorney general, district attorneys and courts, in accordance with the Adult Protective Services Act and the Resident Abuse and Neglect Act or other law. [8.11.6.18 NMAC - N, 4/28/2006]

**8.11.6.19 CONFLICTS WITH 7.1.12 NMAC:** To the extent any provisions of this rule conflict with department of health rule 7.1.12 NMAC, department employees shall be governed by the terms of this rule. [8.11.6.19 NMAC - N, 4/28/2006]

**History of 8.11.6 NMAC:** [Reserved]

## ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

**This is an amendment to 20.11.61 NMAC, Sections 7; 28 and 29, effective 5/15/06.**

**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, ecological, 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 startups, 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 ( $1 \mu\text{g}/\text{m}^3$ ) (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 determining the amount of available  $\text{PM}_{10}$  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 there-

of, 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 continu-

ous 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, O<sub>2</sub> or CO<sub>2</sub> 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 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 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 emit-

ted 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 incre-

ments 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]~~ 40 CFR 52.21 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)~~ (3) 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 PM<sub>10</sub> 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 PM<sub>10</sub> 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, O<sub>2</sub> or CO<sub>2</sub> 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 emis-

sions 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 modifica-

tion, 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 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.

**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; A, 5/15/06]

**20.11.61.28 TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS:**

POLLUTANT	AIR QUALITY CONCENTRATION micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ )	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 <sub>10</sub> )	10	24 hours
Sulfur compounds		
Hydrogen sulfide (H <sub>2</sub> S)	0.20	1 hour
Reduced sulfur compounds (incl. H <sub>2</sub> S)	10	1 hour
Sulfur dioxide	13	24 hours
Sulfuric acid mist	a	
Total reduced sulfur (incl. H <sub>2</sub> S)	10	1 hour
a - No acceptable monitoring techniques available at this time . Therefore, monitoring is not required until acceptable techniques are available. b - <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>		

[20.11.61.28 NMAC - Rp, 20.11.61.25 NMAC, 1/23/06; A, 5/15/06]

**20.11.61.29 TABLE 4 - ALLOWABLE PSD INCREMENTS:**

	Micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ )		
	Class I	Class II	Class III
Nitrogen Dioxide annual arithmetic mean	2.5	25	50
Particulate Matter PM <sub>10</sub> , annual arithmetic mean	4	17	34
PM <sub>10</sub> , 24-hour maximum	8 <sup>a</sup>	30 <sup>a</sup>	60 <sup>a</sup>
Sulfur Dioxide annual arithmetic mean	2	20	40
24-hour maximum	5 <sup>a</sup>	91 <sup>a</sup>	182 <sup>a</sup>
3-hour maximum	25 <sup>a</sup>	512 <sup>a</sup>	700 <sup>a</sup>
a - Not to be exceeded more than once a year. [b - <del>No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile or ganic compounds subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.</del> ]			

[20.11.61.29 NMAC - Rp, 20.11.61.26 NMAC, 1/23/06; A, 5/15/06]

**NEW MEXICO ENERGY,  
MINERALS AND NATURAL  
RESOURCES  
DEPARTMENT  
MINING AND MINERALS  
DIVISION**

This is an amendment of 19.8.11 NMAC, Sections 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1110, 1111, 1112, 1113, 1114, 1115, 1116, 1117 and 1118, effective 4-28-2006.

**19.8.11.1100 Public Notices of Filing of Permit Applications**

**A.** An applicant applying for a permit shall place an advertisement in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations, at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the director. The advertisement shall contain, at a minimum, the following information:

(1) the name and business address of the applicant; and

(2) a map or description which shall:

(a) clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

(b) clearly show or describe the exact location and boundaries of the proposed permit area;

(c) state the name of the U.S. geological survey 7.5-minute quadrangle map(s) which contains the area shown or described; and

(d) if a map is used, indicate the north point;

(3) the location where a copy of the application is available for public inspection under ~~[19.8.11.1100.C]~~ Subsection C of 19.8.11.1100 NMAC and a description of the information requested by the applicant to be held in confidence by the director;

(4) the name and address of the director to which written comments, objections or requests for informal conferences on the application may be submitted under 19.8.11.1101 through 1103 NMAC; and

(5) if an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur, and the duration of the relocation.

**B.** Upon receipt of a com-

plete application for a permit, the director shall issue written notification of:

(1) the applicant's intention to mine a particularly described tract of land;

(2) the application number;

(3) where a copy of the application may be inspected; and

(4) where comments on the application may be submitted under 19.8.11.1101 NMAC.

**C.** The written notifications shall be sent to:

(1) federal, state and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, general governmental entities and fish and wildlife and historic preservation agencies;

(2) governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations;

(3) sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and

(4) the federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application.

**D.** Public inspection of the application.

(1) The applicant shall make a full copy of his complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the director with the county clerk of the county where the mining is proposed to occur, or if approved by the director, at another equivalent public office, if it is determined that office will be more accessible to local residents than the county courthouse.

(2) The applicant shall file the copy of the complete application under ~~[19.8.11.1100.D(1)]~~ Paragraph (1) of Subsection D of 19.8.11.1100 NMAC by the first date of newspaper advertisement of the application. The applicant shall file any subsequent revision of the application with the public office at the same time the revision is submitted to the director.

[11-29-97; 19.8.11.1100 NMAC - Rn, 19 NMAC 8.2.11.1100, 9-29-2000; A, 4-28-2006]

**19.8.11.1101 Opportunity for Submission of Written Comments on Permit Applications**

**A.** Written comments on permit applications may be submitted to the director by the public entities to whom notification is provided under ~~[19.8.11.1100.B~~

~~and 1100.C]~~ Subsections B and C of 19.8.11.1100 NMAC, with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

**B.** These comments shall be submitted to the director within 30 days following the last publication of the above notice.

**C.** The director shall immediately transmit a copy of all such comments for filing and public inspection at the public office where the applicant filed a copy of the application for permit under ~~[paragraph 19.8.11.1100.D]~~ Subsection D of 19.8.11.1100 NMAC.

**D.** A copy shall also be transmitted to the applicant.

[11-29-97; 19.8.11.1101 NMAC - Rn, 19 NMAC 8.2.11.1101, 9-29-2000; A, 4-28-2006]

**19.8.11.1102 Right to File Written Objections**

**A.** Any person whose interests are or may be adversely affected or an officer or head of any federal, state, or local governmental agency or authority shall have the right to file written objections to an initial or revised application for a permit with the director within 30 days after the last publication of the newspaper notice required by ~~[19.8.11.1100.A]~~ Subsection A of 19.8.11.1100 NMAC.

**B.** The director shall immediately upon receipt of any written objections:

(1) transmit a copy of them to the applicant; and

(2) file a copy for public inspection at the public office where the applicant filed a copy of the application for permit under ~~[19.8.11.1100.D]~~ Subsection D of 19.8.11.1100 NMAC.

[11-29-97; 19.8.11.1102 NMAC - Rn, 19 NMAC 8.2.11.1102, 9-29-2000; A, 4-28-2006]

**19.8.11.1103 Hearings and Conferences**

**A.** Procedure for requests. Any person, whose interests are or may be adversely affected by the issuance of the permit, or the officer or head of any federal, state or local government agency or authority may, in writing, request that the director hold an informal conference on any application for a permit. The request shall:

(1) briefly summarize the issues to be raised by the requestor at the conference;

(2) state whether the requestor desires to have the conference conducted in the locality of the proposed mining operations; and

(3) be filed with the director no later than 30 days after the last publication

of the newspaper advertisement placed by the applicant under ~~[19.8.11.1100.A]~~ Subsection A of 19.8.11.1100 NMAC.

**B.** Except as provided in ~~[19.8.11.1103.C]~~ Subsection C of 19.8.11.1103 NMAC ~~[below]~~, if an informal conference is requested in accordance with ~~[19.8.11.1103.A]~~ Subsection A of 19.8.11.1103 NMAC, the director shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted according to the following:

(1) if requested under ~~[19.8.11.1103.A(2)]~~ Paragraph (2) of Subsection A of 19.8.11.1103 NMAC, it shall be held in the locality of the proposed mining;

(2) the date, time, and location of the informal conference shall be advertised by the director in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations at least two weeks prior to the scheduled conference;

(3) if requested, in writing, by a conference requestor in a reasonable time prior to the conference, the director may arrange with the applicant to grant parties to the conference access to the permit area for the purpose of gathering information relevant to the conference;

(4) the conference shall be conducted by a representative of the director, who may accept oral or written statements and any other relevant information from any party to the conference; an electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties; the record shall be maintained and shall be accessible to parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 19.8.14 and 15 NMAC.

**C.** If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their request, the informal conference need not be held.

**D.** Informal conferences held in accordance with ~~[this Section]~~ 19.8.11.1103 NMAC may be used by the director as the public hearing required under ~~[19.8.2.202.C]~~ Subsection D of 19.8.2.202 NMAC on proposed uses or relocation of public roads.

**E.** Public hearing.

(1) A notice of the hearing required in ~~[19.8.5.504.D]~~ Subsection D of 19.8.5.504 NMAC shall be given at least ~~[thirty (30)]~~ 30 days prior to the public hearing.

(2) The date, time and location of the hearing shall be advertised by the director in a newspaper of general circulation in

the county of the proposed surface coal mining and reclamation operations.

(3) The hearing shall be held in the county in which the mining is to be conducted.

(4) Reasonable effort shall be made by the director to give notice to all persons who have made a written request annually for advance notice of such hearings.

(5) Any person desiring to present evidence or give testimony at the hearing on the proposed mining plan shall:

(a) file a request to do so with the director at least ten days prior to the hearing;

(b) contain the name and address of the person desiring to participate; and

(c) contain a concise statement of the nature of the person's interests.

(6) The director will transmit a copy of the request to the operator at least five days prior to the hearing.

(7) Any person who has filed a timely request to participate in the hearing shall be given reasonable time at the hearing to submit relevant evidence, data and views, and shall be allowed to call and examine witnesses, introduce exhibits, cross-examine witnesses and submit rebuttal evidence.

(8) The director or his authorized representative shall act as the hearing officer and taking evidence at the hearing. The hearing officer will preside and shall have the authority to direct the hearing, to examine witnesses and to make such rulings on evidence as may be necessary. The hearing officer shall maintain a verbatim record of said hearing and such record shall be a part of the administrative record for the permit.

**F.** If a public hearing is to be held under ~~[19.8.11.1103.E]~~ Subsection E of 19.8.11.1103 NMAC an informal conference will not be available.

[11-29-97; 19.8.11.1103 NMAC - Rn, 19 NMAC 8.2.11.1103, 9-29-2000; A, 4-28-2006]

#### **19.8.11.1104 Public Availability of Information in Permit Applications on File with the Director**

**A.** Information contained in permit applications on file with the director shall be open, upon written request, for public inspection and copying at reasonable times except for:

(1) information pertaining to coal seams, test ~~[brings]~~ borings, core samplings, or soil samples in permit applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected;

(2) information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined (excepting information

regarding mineral or elemental contents of such coal, which are potentially toxic in the environment) shall be kept confidential and not made a matter of public record; and

(3) information in the reclamation plan portions of the application, which is required to be filed with the director under Section 69-25A-12 NMSA 1978 ~~[of the Act]~~, and which is not otherwise a public record, shall be held in confidence by the director upon the written request of the applicant;

(4) information on the nature and location of archaeological resources on the public land and Indian land as required under the Archaeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470);

(5) information required to be kept confidential shall be clearly identified by the applicant and submitted separately from other portions of the application.

**B.** Information requested to be held as confidential under ~~[this Section]~~ 19.8.11.1104 NMAC shall not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

[11-29-97; 19.8.11.1104 NMAC - Rn, 19 NMAC 8.2.11.1104, 9-29-2000; A, 4-28-2006]

#### **19.8.11.1105 Review of Permit Applications**

**A.** Review and consultation.

(1) The director shall review the complete application and written comments, written objections submitted, and records of any informal conference held under 19.8.11.1101 through 1103 NMAC.

(2) The director shall determine the adequacy of the fish and wildlife plan submitted pursuant to 19.8.9.905 NMAC, in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed surface coal mining and reclamation operations.

**B.** If the director decides to approve the application, he shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of 19.8.14 and 19.8.15 NMAC.

**C.** The director shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant, or by any person who owns or controls the applicant, is currently in violation of any provision of

the act, SMCRA or any federal or state law, rule or regulation pertaining to air or water environmental protection. The director will make this determination based on a review of reasonably available information concerning violation notices and ownership or control links involving the applicant, including information pursuant to 19.8.7.701 and 702 NMAC and 19.8.11.1102 and 1116 NMAC. In the absence of a failure-to-abate cessation order, the director may presume that a notice of violation issued pursuant to 19.8.30.3001 NMAC or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, where the abatement period for such notice of violation has not yet expired and where as part of the violation information provided pursuant to 19.8.7.702 NMAC, the applicant has provided certification that such violation is in the process of being so corrected. Such presumption shall not apply where evidence to the contrary is set forth in the permit application, or when the notice of violation is issued for a nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists the director shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either:

(1) submit to the director, proof which is satisfactory to the director, department or agency which has jurisdiction over such violation that the violation:

(a) has been corrected; or

(b) is in the process of being corrected; or

(2) establish to the director that the applicant or any person owned or controlled by either this applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation; if the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then the applicant shall within 30 days of the judicial action submit proof required under ~~[19.8.11.1105.C(1)(a)]~~ Subparagraph (a) of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

~~[(3)]~~ **D.** Any permit that is issued on the basis of proof submitted under ~~[19.8.11.1105.C(1)(b)]~~ NMAC or ~~1105.C(2)]~~ Subparagraph (b) of Paragraph (1) or Paragraph (2) of Subsection C of 19.8.1105 NMAC that a violation is in the process of being corrected, or pending the outcome of an appeal described in ~~[19.8.11.1105.C(2)]~~ Paragraph (2) of Subsection C of 19.8.11.1105 NMAC, shall be conditionally issued.

~~[(D)]~~ **E.** Before any final determination by the director that the applicant,

or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of the act of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the act, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 19.8.12.1201 NMAC.

~~[(E)]~~ **F.** Final compliance review. After an application is approved, but before the permit is issued, the director shall reconsider its decision to approve the application, based on the compliance review required by ~~[19.8.11.1105.C]~~ Subsection C of 19.8.11.1105 NMAC in light of any new information submitted under ~~[19.8.7.701-I, or 702-D]~~ Subsection I of 19.8.7.701 NMAC, or Subsection D of 19.8.7.702 NMAC.

[11-29-97; 19.8.11.1105 NMAC - Rn, 19 NMAC 8.2.11.1105, 9-29-2000; A, 4-28-2006]

**19.8.11.1106 Criteria for Permit Approval or Denial** No permit or revision application shall be approved, unless the application affirmatively demonstrates and the director finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that:

**A.** the permit application is accurate and complete and that all requirements of the act and 19.8 NMAC have been complied with;

**B.** the applicant has demonstrated that surface coal mining and reclamation operations, as required by the act and 19.8 NMAC, can be feasibly accomplished under the mining and reclamation operations plan contained in the application;

**C.** the assessment of the probable cumulative hydrological impacts (CHIA) of all anticipated coal mining in the cumulative impact area on the hydrologic balance, as described in ~~[19.8.9.907.C]~~ Subsection C of 19.8.9.907 NMAC has been made by the director, and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed permit area;

**D.** the proposed permit area is:

(1) not included within an area designated unsuitable for surface coal mining operations under 19.8.3 and 4 NMAC; or

(2) not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 19.8.4 NMAC,

unless the applicant demonstrates that, before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit; or

~~(3) [not within an area designated as unsuitable for surface coal mining operations under 19.8 NMAC parts 3, and 4 or] not within an area subject to the prohibitions of 19.8.2.201 NMAC.~~

**E.** the proposed operations will not adversely affect any publicly-owned parks or places included in the national register of historic places, except as provided for in ~~[19.8.2.201.A]~~ Subsection A of 19.8.2.201 NMAC;

**F.** for operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the director the documentation required under ~~[19.8.7.703-B]~~ Subsection B of 19.8.7.703 NMAC;

**G.** the applicant has either:  
(1) submitted the proof required by ~~[19.8.11.1105.C(1)]~~ Paragraph (1) of Subsection C of 19.8.11.1105 NMAC; or

(2) made the demonstration required by ~~[19.8.11.1105.C(2)]~~ Paragraph (2) of Subsection C of 19.8.11.1105 NMAC;

**H.** the applicant has submitted proof that all reclamation fees required for abandoned mine land reclamation under Section 402 of Public Law 95-87 have been paid;

**I.** the applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the act;

**J.** surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area;

**K.** the applicant will submit the performance bond or other equivalent guarantee required under 19.8.14 and 19.8.15 NMAC of these rules and regulations, prior to the issuance of the permit;

**L.** the applicant has, with respect to both prime farmland and alluvial valley floors, obtained either a negative determination or satisfied the requirements of 19.8.10.1004 and 1006 NMAC;

**M.** the proposed postmining land use of the permit area has been approved by the director in accordance with the requirements of 19.8.20.2073 NMAC;

**N.** the director has made



all specific approvals required under 19.8.19 through 19.8.28 NMAC [~~of these rules and regulations~~];

**O.** the director has found that the activities would not affect the continued existence of endangered or threatened species, indigenous to the state, or any other species protected under the Endangered Species Act of 1973, or result in the destruction or adverse modification of their critical habitats contrary to state or federal law;

**P.** the director has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the national register of historic places; this finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources or a documented decision that the director has determined that no additional protection measures are necessary.

[11-29-97; 19.8.11.1106 NMAC - Rn, 19 NMAC 8.2.11.1106, 9-29-2000; A, 1-15-2002; A, 4-28-2006]

#### 19.8.11.1107 Improvidently Issued Permits: General Procedures

**A.** Permit review. When the director has reason to believe that the director improvidently issued a surface coal mining and reclamation permit [~~has been improvidently issued~~] the director shall immediately review the circumstances under which the director issued the permit [~~was issued~~], using the criteria in [~~19.8.11.1107.B~~] Subsection B of 19.8.11.1107 NMAC. If the director finds that the director improvidently issued the permit [~~was improvidently issued~~], then the director shall comply with [~~19.8.11.1107.C~~] Subsection C of 19.8.11.1107 NMAC.

**B.** Review criteria. The director shall find that the director improvidently issued a surface coal mining and reclamation permit [~~was improvidently issued~~] if:

(1) under the regulatory program's violations review criteria [~~of the regulatory program~~] at the time the director issued the permit [~~was issued~~];

(a) the director should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

(b) the director issued the permit [~~was issued~~] on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

(2) the violation, penalty or fee:

(a) remains unabated or delinquent; and

(b) is not subject of a good faith

appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to [~~the satisfaction of~~] the responsible agency's satisfaction; and

(3) where the permittee was linked to the violation, penalty[?] or fee through ownership or control under the regulatory program's violations review criteria [~~of the regulatory program~~] at the time the director issued the permit [~~was issued~~], an ownership or control link between the permittee and the person responsible for the violation, penalty[?] or fee still exists, or where the link has been severed, the permittee continues to be responsible for the violation, penalty[?] or fee.

[~~4~~] **C.** When determining what specific unabated violations, delinquent penalties and fees, and ownership and control relationships to which [~~this section~~] 19.8.11.1107 NMAC will apply, the director shall use the applicable violations review criteria contained in the preamble of the *federal register* 54 FR 18440-18441.

[~~C~~] **D.** The provisions of 19.8.11.1118 NMAC shall be applicable when the director determines:

(1) whether a violation, penalty[?] or fee existed at the time that it was cited, remains unabated or delinquent, has been corrected, is in the process of being corrected[?] or is the subject of a good faith appeal, and

(2) whether any ownership or control link between the permittee and the person responsible for the violation, penalty[?] or fee existed, still exists[?] or has been severed.

[~~D~~] **E.** Remedial measures. When the director, under [~~19.8.11.1107.B~~] Subsection B of 19.8.11.1107 NMAC, finds that because of an unabated violation or a delinquent penalty or fee [~~a permit was~~] the director improvidently issued a permit, the director shall use one or more of the following remedial measures:

(1) implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(2) impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(3) suspend the permit until the violation is abated or the penalty or fee is paid; or

(4) rescind the permit under 19.8.11.1110 NMAC.

[~~E~~] **F.** If the director decides to suspend the permit, it shall afford at least 30 days written notice to the permittee. If the director decides to rescind the permit, it

shall issue a notice in accordance with 19.8.11.1110 NMAC. In either case, the permittee shall be given the opportunity to request administrative review of the notice as provided for in 19.8.12 NMAC. The director's decision shall remain in effect during the appeal's pendency [~~of the appeal, unless temporary relief is granted in accordance with 19.8.12.1202.E NMAC~~] unless the district court grants temporary relief.

[11-29-97; A, 12-15-99: 19.8.11.1107 NMAC - Rn, 19 NMAC 8.2.11.1107, 9-29-2000; A, 4-28-2006]

#### 19.8.11.1108 Criteria for Permit Approval or Denial: Existing Structures

**A.** No application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the director finds, in writing, on the basis of information set forth in the complete application that the structure meets the performance standards of the act and 19.8.19 through 28 NMAC.

**B.** If the director finds that the structure does not meet the requirements of [~~19.8.11.1108.A~~] Subsection A of 19.8.11.1108 NMAC, the director shall require the applicant to submit a compliance plan for modification or reconstruction of the structure and shall find prior to the issuance of the permit that:

(1) the modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of 19.8.19 through 19.8.28 NMAC as soon as possible, but not later than six months after issuance of the permit;

(2) the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

(3) the applicant will monitor the structure to determine compliance with the performance standards of 19.8.19 through 19.8.28 NMAC.

**C.** Should the director find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety, the applicant will be required to abandon the existing structure. The structure shall not be used for or to facilitate surface coal mining operations after the effective date of issuance of the permanent regulatory program permit. Abandonment of the structure shall proceed on a schedule approved by the director in compliance with 19.8.20.2072 NMAC.

[11-29-97; 19.8.11.1108 NMAC - Rn, 19 NMAC 8.2.11.1108, 9-29-2000; A, 4-28-2006]

### 19.8.11.1109 Permit Approval or Denial Actions

A. The director shall approve, require modification of, or deny all applications for permits under the act and 19.8. NMAC on the basis of:

- (1) complete applications for permits and revisions or renewals thereof;
- (2) public participation as provided for in 19.8.5 through 19.8.13 NMAC;
- (3) compliance with any applicable provisions of 19.8.10 NMAC; and
- (4) processing and review of applications as required by ~~[this Part]~~ 19.8.11 NMAC.

B. The director shall take action as required under ~~[19.8.11.1109.A]~~ Subsection A of 19.8.11.1109 NMAC, within the following times.

(1) Initiation of regulatory programs. Except as provided for in ~~[19.8.11.1109.B(3)]~~ Paragraph (3) of Subsection B of 19.8.11.1109 NMAC and 19.8.5.501 NMAC, a complete application submitted to the director within the time required by ~~[19.8.5.504.A]~~ Subsection A of 19.8.5.504 NMAC shall be processed by the director so that an application is approved or denied:

- (a) within eight months after the date of approval of the state program; and
- (b) if an informal conference or public hearing has been held pursuant to 19.8.11.1103 NMAC within 60 days from the close of the conference or hearing.

(2) Subsequent permanent program applications. Except as provided for in ~~[19.8.11.1109.B(3)]~~ Paragraph (3) of Subsection B of 19.8.11.1109 NMAC, a complete application submitted to the director after the time required in ~~[19.8.5.504.A]~~ Subsection A of 19.8.5.504 NMAC and in accordance with ~~[19.8.5.504.B]~~ Subsection B of 19.8.5.504 NMAC shall be processed by the director, so that an application is approved or denied within the following times:

(a) if an informal conference or public hearing has been held under 19.8.11.1103 NMAC within 60 days of the close of the conference or hearing; or

(b) if no informal conference has been held under ~~[19.8.11.1103.A through 1103.D]~~ Subsections A through D of 19.8.11.1103 NMAC then within a reasonable time after the receipt by the director of the complete application, the director will process the application; in establishing what is reasonable time in which to approve or deny the application, the director shall take into account the time needed for proper investigation of the proposed permit and adjacent areas; the complexity of the application; and whether written objections to or comments on the complete application have been filed with the director.

(3) Notwithstanding any of the foregoing provisions of ~~[this Section]~~ 19.8.11.1109 NMAC, no time limit under the act or ~~[this Section]~~ 19.8.11.1109 NMAC requiring the director to act shall be considered expired from the time the director initiates a proceeding under ~~[19.8.11.1105.D]~~ Subsection E of 19.8.11.1105 NMAC until the final decision of the director.

C. If an informal conference or a public hearing is held under 19.8.11.1103 NMAC, the director shall give his written findings to the permit applicant and to each person who is party to the conference or hearing, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefore in the decision.

D. If no such informal conference, pursuant to ~~[19.8.11.1103.A through 1103.D]~~ Subsections A through D of 19.8.11.1103 NMAC, has been held, the director shall give his written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

E. Simultaneously, the director shall:

- (1) give a copy of his decision to:
  - (a) each person and government official who filed a written objection or comment with respect to the application; and
  - (b) the regional director of the office of surface mining together with a copy of any permit issued by the director; and
- (2) publish a summary of his decision in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations.

F. Within 10 days after the granting of a permit, including the filing of the performance bond or other equivalent guarantee which complies with 19.8.9.14 and 19.8.15 NMAC, the director shall notify the county clerk of the county where the land to be mined is located that a permit has been issued. The notice shall describe the location of the permit area.

[11-29-97; 19.8.11.1109 NMAC - Rn, 19 NMAC 8.2.11.1109, 9-29-2000; A, 4-28-2006]

**19.8.11.1110 Improvidently issues permits: Rescission process** When the director, according to ~~[19.8.11.1107.C(4)]~~ Paragraph (4) of Subsection E of 19.8.11.1107 NMAC, elects to rescind an improvidently issued permit, the director shall serve on the permittee a notice of suspension and rescission which includes the reasons for the finding of the director under ~~[19.8.11.1107.B]~~ Subsection B of 19.8.11.1107 NMAC and states that:

A. automatic suspension and rescission: after a specified period of time, not to exceed 90 days, the permit automatically will be suspended; the permit shall be rescinded within, but not to exceed, 90 days after such suspension, unless the permittee submits proof, and the director finds, within the 90 day period, consistent with the provisions of 19.8.11.1118 NMAC, that:

(1) the director's findings under ~~[19.8.11.1107.B]~~ Subsection B of 19.8.11.1107 NMAC were erroneous;

(2) the permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(3) the violation, penalty or fee is the subject of good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(4) since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;

B. cessation of operations: after permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the director. [11-29-97; 19.8.11.1110 NMAC - Rn, 19 NMAC 8.2.11.1110, 9-29-2000; A, 4-28-2006]

### 19.8.11.1111 Permit Terms

A. Each permit shall be issued for a fixed term not to exceed 5 years. A longer fixed permit term may be granted, if:

- (1) the application is full and complete for the specified longer term; and
- (2) the applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of equipment and the opening of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

#### B. Due diligence.

(1) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

(2) The director may grant reasonable extensions of time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if:

(a) litigation precludes the commencement or threatens substantial eco-

conomic loss to the permittee, or

(b) there are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the director under this paragraph shall be specifically set forth in the permit and notice of the extension shall be made to the public.

C. Permits may be suspended, revoked, or modified by the director in accordance with 19.8.10.1000, 1002, 1003 and 1005 NMAC, 19.8.13.1300 NMAC and 19.8.29 through 19.8.31 NMAC.

[11-29-97; 19.8.11.1111 NMAC - Rn, 19 NMAC 8.2.11.1111, 9-29-2000; A, 4-28-2006]

#### 19.8.11.1112 Conditions of Permits: General and Right of Entry

Each permit issued by the director shall ensure that:

A. except to the extent that the director otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application; and

B. the permittee shall allow the authorized representatives of the secretary of the U.S. department of interior, including, but not limited to, inspectors and fee compliance officers and the director to have the rights of entry provided for in 19.8.29.2900 NMAC; and be accompanied by private persons for the purpose of conducting an inspection in accordance with 19.8.29 NMAC, when the inspection is in response to an alleged violation reported to the director by the private person;

C. the permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the maps submitted under 19.8.8 and 19.8.9 NMAC and approved for the term of the permit and which are subject to the performance bond or other equivalent guarantee in effect pursuant to 19.8.14 and 19.8.15 NMAC;

D. at least 10 days prior to initial surface disturbance, the permittee shall notify the director, in writing, of his intentions to begin operations;

E. the operator shall pay all reclamation fees required for abandoned mine land reclamation under Section 402 of Public Law 95-87 for coal produced under the permit for sale, transfer or use in the

manner required by that section.

[11-29-97; 19.8.11.1112 NMAC - Rn, 19 NMAC 8.2.11.1112, 9-29-2000; A, 4-28-2006]

**19.8.11.1113 Conditions of Permits: Environment, Public Health, and Safety** Each permit issued by the director shall ensure and contain specific conditions requiring that:

A. the permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

(1) any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(2) immediate implementation of measures necessary to comply; and

(3) warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance;

B. the permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 19.8.19 through 19.8.28 NMAC, the act, and these rules and regulations, and which prevent violation of any other applicable state or federal law;

C. the permittee shall conduct his operations:

(1) in accordance with any measure specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

(2) utilizing any methods specified in the permit by the director in approving alternative methods of compliance with the performance standards of the act and these rules and regulations, in accordance with the provisions of the act, [~~19.8.11.1106.M~~] Subsection M of 19.8.11.1106 NMAC and 19.8.19 through 19.8.28 NMAC.

[11-29-97; 19.8.11.1113 NMAC - Rn, 19 NMAC 8.2.11.1113, 9-29-2000; A, 4-28-2006]

#### 19.8.11.1114 Conformance of Permit

The director shall include in the approved permit the following provision: The permittee has expressly undertaken in this permit application to comply with various performance standards and design criteria presently contained in or derived from of the New Mexico coal surface mining regulations. Such undertakings are made upon the condition and with the understanding that any amendments to [~~this Part~~] 19.8.11

NMAC shall entitle the permittee to apply for and receive a review of the related permit provision for the purpose of conforming the permit to the amended state regulations or making other appropriate permit amendments. The permittee and the mining and minerals division shall meet within [~~thirty (30)~~] 30 days of request by the permittee or notice by the director for the purpose of considering such amendments to the permit as are appropriate.

[11-29-97; 19.8.11.1114 NMAC - Rn, 19 NMAC 8.2.11.1114, 9-29-2000; A, 4-28-2006]

#### 19.8.11.1115 Verification of Ownership or Control Application Information

A. In accordance with [~~19.8.11.1105.E~~] Subsection E of 19.8.11.1105 NMAC, prior to the issuance of a permit, the director shall review the information in the application provided pursuant to 19.8.7.701 NMAC to determine that such information, including the identification of the operator and all owners and controllers of the operator, is complete and accurate. In making such determination, the director shall compare the information provided in the application with information from other reasonably available sources, including:

(1) the director's inspection and enforcement records; and

(2) state corporation commission or tax records, to the extent they contain information concerning ownership or control links; and

(3) the applicant/violator system; and

(4) other information or records that may be available to the director.

B. If it appears from the information provided in the application pursuant to [~~19.8.7.701.C and 701.D~~] Subsections C and D of 19.8.7.701 NMAC that none of the persons identified in the application has had any previous mining experience, the director shall inquire of the applicant and investigate whether any person other than those identified in the application will own or control the operation (as either an operator or other owner or controller).

C. If, as a result of the review conducted under [~~19.8.11.1115.A and 1115.B~~] Subsections A and B of 19.8.11.1115 NMAC, the director identifies any potential omission, inaccuracy, or inconsistency in the ownership or control information provided in the application, it shall, prior to making a final determination with regard to the application, contact the applicant and require that the matter be resolved through submission of:

(1) an amendment to the applica-

tion; or

(2) a satisfactory explanation which includes credible information sufficient to demonstrate that no actual omission, inaccuracy, or inconsistency exists; the director shall also take action in accordance with the provisions of 19.8.30 NMAC, where appropriate.

**D.** Upon completion of the review conducted under this section, the director shall promptly enter into or update all ownership or control information on AVS. [11-29-97; 19.8.11.1115 NMAC - Rn, 19 NMAC 8.2.11.1115, 9-29-2000; A, 4-28-2006]

#### **19.8.11.1116 Review of Ownership or Control and Violation Information**

**A.** Following the verification of ownership or control information pursuant to 19.8.11.1115 NMAC, the director shall review all reasonably available information concerning violation notices and ownership or control links involving the applicant to determine whether the application can be approved under 19.8.7.702 NMAC. Such information shall include:

(1) with respect to ownership or control links involving the applicant, all information obtained under 19.8.11.1115 NMAC and 19.8.7.701 NMAC; and

(2) with respect to violation notices, all information obtained under 19.8.7.702 NMAC, information obtained from OSM, including information shown in the AVS, and information from the director's own records concerning violation notices.

**B.** If the review conducted under ~~[19.8.11.1116.A]~~ Subsection A of 19.8.11.1116 NMAC discloses any ownership or control link between the applicant and any person cited in a violation notice:

(1) the director shall so notify the applicant and shall refer the applicant to the agency with jurisdiction over such violation notice; and

(2) the director shall not approve the application unless and until it determines, in accordance with the provisions of 19.8.11.1117 and 1118 NMAC, that:

(a) all ownership or control links between the applicant and any person cited in a violation notice are erroneous or have been rebutted; or

(b) the violation has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of ~~[19.8.11.1105.C(1)]~~ Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

**C.** Following the director's decision on the application (including unconditional issuance, conditional issuance, or denial of the permit) or following the applicant's withdrawal of the appli-

cation, the director shall promptly enter all relevant information related to such decision or withdrawal into AVS.

[11-29-97; 19.8.11.1116 NMAC - Rn, 19 NMAC 8.2.11.1116, 9-29-2000; A, 4-28-2006]

#### **19.8.11.1117 Procedures for Challenging Ownership or Control Links Shown in AVS**

**A.** Challenging AVS linkage and violation status.

(1) Any applicant or other person shown in AVS in an ownership or control link to any person may challenge such link in accordance with the provisions of ~~[19.8.11.1117.B—1117.D]~~ Subsection B through Subsection D of 19.8.11.1117 NMAC and ~~[1118]~~ 19.8.11.1118 NMAC, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the link.

(2) Any applicant or other person shown in AVS in an ownership or control link to any person cited in a federal violation notice may challenge the status of the violation ~~[covered by such notice]~~ such notice covers in accordance with the provisions of ~~[19.8.11.1117.B—1117.D]~~ Subsection B through Subsection D of 19.8.11.1117 NMAC and ~~[1118]~~ 19.8.11.1118 NMAC, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the ~~[status of the violation]~~ violation's status.

(3) Any applicant or other person shown in AVS in an ownership or control link to any person cited in a state violation notice may challenge the status of the violation covered by such notice in accordance with the state program equivalents to ~~[19.8.11.1117.B—1117.D]~~ Subsection B through Subsection D of 19.8.11.1117 NMAC and ~~[1118]~~ 19.8.11.1118 NMAC for the state that issued the violation notice, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the ~~[status of the violation]~~ violation's status.

**B.** Any applicant or other person who wishes to challenge an ownership or control link shown in AVS or ~~[the status of a federal violation]~~ a federal violation's status, and who is eligible to do so under the provisions of ~~[19.8.11.1117.A(1) or 1117.A(2)]~~ Paragraphs (1) or (2) of Subsection A of 19.8.11.1117 NMAC, shall submit a written explanation of ~~[the basis for]~~ the challenge's basis, along with any relevant evidentiary materials and supporting documents, to the director.

**C.** The director shall review any information the applicant or other person submitted under ~~[19.8.11.1117.B]~~ Subsection B of 19.8.11.1117 NMAC and shall make a writ-

ten decision whether or not the applicant or other person has shown the ownership or control link ~~[has been shown to be]~~ is erroneous or ~~[has been]~~ rebutted ~~[and/or]~~ or whether the violation ~~[covered by the notice]~~ the notice covers remains outstanding, has been corrected, is in the process of being corrected<sup>[5]</sup> or is the subject of a good faith appeal within the meaning of ~~[19.8.11.1105.C(1)]~~ Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

**D.** Notification of decision.

(1) If, as a result of the decision the director reached under ~~[19.8.11.1117.C]~~ Subsection C of 19.8.11.1117 NMAC, the director determines that the applicant or other person has shown the ownership or control link ~~[has been shown to be]~~ is erroneous or ~~[has been]~~ rebutted ~~[and/or]~~ or that the violation ~~[covered by the notice]~~ the notice covers has been corrected, is in the process of being corrected<sup>[5]</sup> or is the subject of a good faith appeal, the director shall so notify the applicant or other person and OSM, and shall correct the information in AVS.

(2) If, as a result of the decision the director reached under ~~[19.8.11.1117.C]~~ Subsection C of 19.8.11.1117 NMAC, the director determines that the applicant or other person has not shown the ownership or control link ~~[has not been shown to be]~~ is erroneous ~~[and has not been]~~ or rebutted and that the violation ~~[covered by the notice]~~ the notice covers remains outstanding, the director shall so notify the applicant or other person and OSM, and ~~[shall]~~ update the information in AVS, if necessary.

(a) The director shall serve a copy of the decision on the applicant or other person by certified mail. Service shall be complete upon the notice or mail's tender ~~[of the notice or of the mail]~~ and shall not be deemed incomplete because of a refusal to accept.

(b) The applicant or other person may appeal the director's decision in accordance with 19.8.12 NMAC. The director's decision shall remain in effect during the appeal's pendency ~~[of the appeal]~~, unless the district court grants temporary relief ~~[is granted in accordance with 19.8.12.1202.E NMAC]~~.

[11-29-97; 19.8.11.1117 NMAC - Rn, 19 NMAC 8.2.11.1117, 9-29-2000; A, 4-28-2006]

#### **19.8.11.1118 Standards for Challenging Ownership or Control Links and the Status of Violations**

**A.** The provisions of this section shall apply whenever a person has and exercises a right, under the provisions of 19.8.11.1107, 1110, 1116, or 1117 NMAC or under the provisions of 19.8.12 NMAC, to challenge (1) an ownership or

control link to any person and/or (2) the status of any violation covered by a notice.

**B. Responsibility for decision-making.**

(1) Except as provided in ~~[19.8.11.1118.B(3)]~~ Paragraph (3) of Subsection B of 19.8.11.1118 NMAC:

(a) the director before which an application is pending shall have responsibility for making decisions with respect to ownership or control relationships of the application;

(b) the director that issued a permit shall have responsibility for making decisions with respect to the ownership or control relationships of the permit;

(c) the state director for the state that issued a state violation notice shall have responsibility for making decisions with respect to the ownership or control relationships of the violation;

(d) the regulatory agency that issued a violation notice, whether state or federal, shall have responsibility for making decisions concerning the status of the violation covered by such notice, i.e., whether the violation remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of ~~[19.8.11.1105.C(1)]~~ Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

(2) OSM shall have responsibility for making decisions with respect to the ownership or control relationships of a federal violation notice.

**(3) OSM review.**

(a) With respect to information shown on AVS, the responsibilities referred to in ~~[19.8.11.1118.B(1)]~~ Paragraph (1) of Subsection B of 19.8.11.1118 NMAC shall be subject to the plenary authority of OSM to review any state regulatory authority decision regarding an ownership or control link.

(b) With respect to ownership or control information which has not been entered into AVS by a state and with respect to information shown on AVS relating to the status of a violation, state regulatory authorities' determinations are subject to OSM's program authority oversight under 30 CFR Parts 733, 842, and 843.

**C. Burden of proof.**

(1) In any formal or informal review of an ownership or control link or of the status of a violation covered by a violation notice, the responsible agency shall make a prima facie determination or showing that such link exists, existed during the relevant period, and/or that the violation covered by such notice remains outstanding. Once such a prima facie determination or showing has been made, the person challenging such link or the status of the violation shall have the burden of proving by a

preponderance of the evidence, with respect to any relevant time period:

(a) that the facts relied upon by the responsible agency to establish ownership or control under the definition of "owned or controlled" or "owns or controls" in ~~[19.8.1.7.O(8)]~~ Paragraph (8) of Subsection O of 19.8.1.7 NMAC or a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in ~~[19.8.1.7.O(8)]~~ Paragraph (8) of Subsection O of 19.8.1.7 NMAC, do not or did not exist;

(b) that a person subject to a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in ~~[19.8.1.7.O(8)]~~ Paragraph (8) of Subsection O of 19.8.1.7 NMAC, does not or did not in fact have the authority directly or indirectly to determine the manner in which surface coal mining operations are or were conducted, or

(c) that the violation covered by the violation notice did not exist, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal within the meaning of ~~[19.8.11.1105.C(1)]~~ Paragraph (1) of Subsection C of 19.8.11.1105 NMAC; provided that the existence of the violation at the time it was cited may not be challenged under the provisions of 19.8.11.1117 NMAC by a permittee, unless such challenge is made by the permittee within the context of 19.8.11.1108 and 1110 NMAC; by any person who had a prior opportunity to challenge the violation notice and who failed to do so in a timely manner; or by any person who is bound by a prior administrative or judicial determination concerning the existence of the violation.

(2) In meeting the burden of proof set forth in ~~[19.8.11.1118.C(1)]~~ Paragraph (1) of Subsection C of 19.8.11.1118 NMAC ~~[of this section]~~, the person challenging the ownership or control link or the status of the violation shall present probative, reliable, and substantial evidence and any supporting explanatory materials, which may include before the responsible agency:

(a) affidavits setting forth specific facts concerning the scope of responsibility of the various owners or controllers of an applicant, permittee, or any person cited in a violation notice; the duties actually performed by such owners or controllers; the beginning and ending dates of such owners' or controllers' affiliation with the applicant, permittee, or person cited in a violation notice; and the nature and details of any transaction creating or severing an ownership or control link; or specific facts concerning the status of the violation;

(b) if certified, copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, corre-

spondence, or other relevant company records;

(c) if certified, copies of documents filed with or issued by any state, municipal, or federal governmental agency;

(d) an opinion of counsel, when supported by (1) evidentiary materials; (2) a statement by counsel that he or she is qualified to render the opinion; and (3) a statement that counsel has personally and diligently investigated the facts of the matter or, where counsel has not so investigated the facts, a statement that such opinion is based upon information which has been supplied to counsel and which is assumed to be true.

(3) Before any administrative or judicial tribunal reviewing the decision of the responsible agency, any evidence admissible under the rules of such tribunal.

**D.** Following any determination by a state director or other state agency, or any decision by an administrative or judicial tribunal reviewing such determination, the director shall review the information in AVS to determine if it is consistent with the determination or decision. If it is not, the director shall promptly inform OSM and request that the AVS information be revised to reflect the determination or decision.

[11-29-97; 19.8.11.1118 NMAC - Rn, 19 NMAC 8.2.11.1118, 9-29-2000; A, 4-28-2006]

**NEW MEXICO ENERGY,  
MINERALS AND NATURAL  
RESOURCES  
DEPARTMENT  
MINING AND MINERALS  
DIVISION**

This is an amendment of 19.8.12 NMAC, Sections 1201, 1202 and 1203 and the adoption of a new section in 19.8.12 NMAC, Section 1204, effective 4-28-2006.

**19.8.12.1201 [Administrative Review by the Commission]**

~~A. Any person who is aggrieved by a decision of the director may appeal to the commission for relief. In order to perfect such appeal, a notice must be filed with the commission and the director within thirty days of the director's decision. A hearing limited to the record compiled before the director shall be conducted by the commission.~~

~~B. The commission shall consider and weigh all of the evidence contained in the record and shall make independent findings upon which to base its decision. The commission shall not be bound by findings of the director, notwithstanding such findings may be supported in~~

the record by substantial evidence.

**C.** If before the date set for hearing application is made to the commission for leave to present additional evidence, and it is shown to the satisfaction of the commission that the additional evidence is material and that there was good reason for failure to present it in the initial proceeding, the commission may order that the additional evidence be taken by the director. The director may modify his findings and decision by reason of the additional evidence and shall file with the commission a transcript of the additional evidence, together with any modified or new findings or decision.

**D.** Upon receipt of the notice of appeal, the chairman of the commission shall call a meeting of the commission with 30 days of the date the notice of appeal is filed to conduct a hearing on the appeal. The appealing party shall be given notice by the commission of the time and place of the hearing at least 20 days in advance of the convening.

**E.** Ex parte contacts between representatives of the parties before the commission and the commission shall be prohibited. [RESERVED] [11-29-97; 19.8.12.1201 NMAC - Rn, 19 NMAC 8.2.12.1201, 9-29-2000; Repealed, 4-28-2006]

### 19.8.12.1202 Judicial Review

**A.** [Any] A party to a proceeding before the [commission] director who is aggrieved by a director's decision [of the commission] issued after a hearing may obtain a review of that decision [other than a promulgation of a regulation, in the district court of Santa Fe county. In order to obtain a review such party must, within thirty days after the decision is rendered, file with the court a petition for review, a copy of which shall be served upon the chairman of the commission and the attorney general. The petition shall state all exceptions of the decision, and the court shall not consider any exceptions not contained in the petition. Failure to file such petition in the manner and within the time specified shall operate as a waiver of the right to judicial review.] by an appeal to the district court pursuant to Section 39-3-1.1 NMSA 1978.

**B.** Within thirty days after service of the copy of the petition for review, the commission shall prepare, certify and file with the clerk of the district court the record of the case, comprising a copy of the complete transcript of the testimony taken at the hearing; copies of all pertinent documents and other written evidence introduced at the hearing; a copy of the decision of the commission and a copy of the petition for review containing the exceptions filed to the decision. For good cause shown within the time stated, the judge of the district

court may issue an order granting one extension of time not to exceed sixty days. With permission of the court, the record may be shortened by stipulation of all parties to the review proceeding. The court may require or permit subsequent corrections to the record when deemed desirable. At any time before or during the review proceeding the aggrieved party may apply to the reviewing court for an order staying the operation of the commission's decision pending the outcome of the review. The court may grant such relief, under such conditions as it may prescribe, if:

(1) a hearing has been held on the request for temporary relief in which all parties were given an opportunity to be heard;

(2) the applicant shows that there is substantial likelihood that the findings of the court will be favorable to him; and

(3) such relief will not adversely affect the health or safety of the public or cause significant, imminent environmental harm to land, air or water resources.

**C.** Upon the review of any commission decision, the judge shall sit without a jury, and may hear oral arguments and receive written briefs, but no evidence not offered at the hearing shall be taken, except that in cases of alleged omissions or errors in the record, testimony thereon may be taken by the court. The court may affirm the decision of the commission or remand the case for further proceedings; or it may reverse the decision, if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(1) in violation of constitutional provisions;

(2) in excess of the statutory authority or jurisdiction of the commission; or made upon unlawful procedure;

(3) affected by other error of law;

(4) unsupported by substantial evidence on the entire record as submitted; or

(5) unlawful, arbitrary or capricious. If the court reverses or remands the decision of the commission, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or remand.

**D.** Any party to the review proceeding in the district court, including the commission, may appeal to the supreme court under the rules of procedure applicable in other civil cases.

**E B.** [Any] A person who is or may be aggrieved by [any regulation, or any] a rule or an amendment or repeal of a [regulation, adopted by the commission] rule the commission adopts may appeal to the court of appeals for [relief. All appeals shall be based upon the record made at the hearing before the commission, and shall be

filed with the court of appeals within thirty days after filing of the regulation under the State Rules Act. An appeal of the court of appeals under this subsection is perfected by the timely filing of a notice of appeal with the court of appeals, with a copy attached of the regulation from which the appeal is taken. Appellant shall certify in his notice of appeal that satisfactory arrangements have been made with the commission for preparation of transcripts of the record of the hearing at the expense of the appellant for filing with the court. Upon appeal, the court of appeals shall set aside the regulation only if determined to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) contrary to law; or

(3) unsupported by substantial evidence on the entire record as submitted.] review pursuant to Subsection B of 69-25A-30 NMSA 1978.

[11-29-97; 19.8.12.1202 NMAC - Rn, 19 NMAC 8.2.12.1202, 9-29-2000; A, 4-28-2006]

### 19.8.12.1203 Formal Review of Notices of Violation, Cessation Orders, and Show Cause Orders by the Director

**A.** Upon receipt of a notice of violation, civil penalty assessment or cessation order pursuant to 19.8.30.3000, 19.8.30.3001 or 19.8.31 NMAC, or any such notice or order's modification, vacation[?] or termination [of such notice or order], a permittee or any person having an interest [which is or may be affected by such order or notice] that such order or notice does or may adversely affect may apply to the director for review of the notice or order within [thirty (30)] 30 days of the notice or order's receipt [thereof] or within [thirty (30)] 30 days of its modification, vacation[?] or termination.

**B.** The application for review shall be in writing, setting forth the applicant's name, address and telephone number [of the applicant-]; the applicant's interest and [how adversely affected (if not the operator) the order or notice to be reviewed]; if the applicant is not the operator, how the order or notice to be reviewed adversely affects it; and generally, the grounds alleged and the relief requested.

**C.** [A written request for a hearing shall be made at the time the permittee or other interested person makes application for review or else shall be deemed waived.] If the permittee or other interested party does not apply for review in writing, they waive the right to review.

**D.** The filing of an application for review shall not [operate as a] stay [of] the order or notice, or [of] any order or notice's modification, vacation or termination [of an order or notice]. Pending [completion of the review] the review's

completion, the applicant may file with the director a written request that the director grant temporary relief in accordance with Subsection D of Section 69-25A-29 NMSA 1978 ~~[of the act]~~.

**E.** The review pursuant to Subsection A of 19.8.12.1203 NMAC shall include such investigation as the director deems appropriate and an opportunity for a hearing at the capitol (or such other place ~~[may be agreed to]~~ as the applicant may agree), at the applicant's request ~~[of the applicant]~~ and within ~~[thirty (30)]~~ 30 days ~~[of the receipt of]~~ after receiving the request, to enable the applicant to present information relating to the order or notice's issuance, continuance, modification, vacation or termination ~~[of the order or notice which is the subject matter of the application for review]~~.

**F.** The director or his authorized representative shall hold a hearing at the capitol (or such other place as ~~[may be agreed to by the permittee]~~ the permittee may agree) within ~~[thirty (30)]~~ 30 days after actual notice to the permittee of ~~[the issuance of]~~ an order to show cause ~~[cause's issuance pursuant to 19.8.30.3002 NMAC]~~.

**G.** The director or his authorized representative shall give the operator, permittee ~~[;]~~ or other interested persons ~~[shall be given]~~ written notice of the time, place and date of any hearing ~~[required by this regulation]~~ this rule requires at least five ~~[5]~~ (5) days prior ~~[thereto]~~ to the hearing, except that the director or his authorized representative shall give at least ~~[fifteen (15)]~~ 15 days notice ~~[shall be required under]~~ for hearings that Subsection F of 19.8.12.1203 NMAC requires. Any times for holding a hearing may be extended by the parties' agreement ~~[of the parties thereto]~~.

**H.** All hearings ~~[required by]~~ this section requires shall be of record, stenographically recorded, adjudicatory in nature and conducted in accordance with 19.8.12.1200 NMAC. The inspector issuing or causing to be issued the cessation order, notice of violation or order to show cause shall not participate, directly or indirectly, in the decision making process. ~~[No evidence as to statements made or evidence produced by one party]~~ A party may not introduce as evidence or use to impeach a witness statements another party makes or evidence another party produces at an informal hearing or conference held pursuant to 19.8.30.3004 NMAC, or at an assessment conference held pursuant to 19.8.31.3106 NMAC ~~[shall be introduced as evidence by another party or to impeach a witness]~~.

**I.** The director, or his authorized representative serving as hearing officer, may hold pre-hearing conferences

to facilitate stipulation of facts, delineation of the issues, order of presentation~~[;]~~ or other appropriate procedural rules and settlement.

**J.** The director shall issue, and serve upon the parties, a written decision and order, including his reasons and findings of fact, as follows:

(1) within ~~[thirty (30)]~~ 30 days (unless ~~the director has granted~~ temporary relief ~~[has been granted]~~ pursuant to Subsection D of Section 69-25A-29 ~~[or 69-25A-30 NMSA 1978 of the act]~~) of a hearing, and after receiving the report of such investigation conducted pursuant to Subsection B of 19.8.12.1203 NMAC, vacating, affirming, modifying or terminating the issuance, continuance, modification, vacation or termination of the order or notice; and

(2) within ~~[sixty (60)]~~ 60 days of the hearing held pursuant to Subsection F of 19.8.12.1203 NMAC, quashing, in whole or in relevant part, the order to show cause or suspending or revoking, in whole or relevant part, the permit.

**K.** The district court may review the director's decision ~~[may be reviewed by the commission pursuant to Subsection G of Section 69-25A-29 NMSA 1978 of the act and 19.8.12.1201 NMAC. The commission's decision may be judicially reviewed]~~ pursuant to Subsection A of Section 69-25A-30 NMSA 1978 ~~[of the act]~~ and 19.8.12.1202 NMAC.

**L.** ~~[Any hearing required by this regulation may]~~ The director may consolidate any hearing this rule requires, to the extent practicable without prejudicing the rights of the person to whom a notice, cessation order~~[;]~~ or order to show cause is directed, ~~[be consolidated]~~ with any other hearing provided for by these ~~[regulations]~~

[11-29-97; 19.8.12.1203 NMAC - Rn, 19 NMAC 8.2.12.1203, 9-29-2000; A, 4-28-2006]

#### **19.8.12.1204 Petitions for Award of Legal Costs and Expenses**

**A.** Who may file. A person may file a petition for award of costs and expenses including attorneys' fees that person has reasonably incurred as a result of his participation in an administrative review under the act that results in the director issuing a final order pursuant to 19.8.12.1200 or 19.8.12.1203 NMAC.

**B.** Where to file; time for filing. The person seeking an award for costs and expenses shall file a petition for an award of costs and expenses including attorneys' fees with the director within 45 days after such order's receipt. A person who fails to timely file the petition may waive the right to such an award.

**C.** Contents of petition. A petition filed under this section shall include the person's name from whom costs and expenses are sought with the following submitted in support of the petition:

(1) an affidavit setting forth in detail all costs and expenses including attorneys' fees the person reasonably incurred for, or in connection with, the person's participation in the proceeding;

(2) receipts or other evidence of such costs and expenses; and

(3) where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area and the individual's performing the services experience, reputation and ability.

**D.** Answer. Any person served with a copy of the petition shall have 30 days from the petition's service within which to file an answer to the petition.

**E.** Who may receive an award. The director may award appropriate costs and expenses including attorneys' fees as follows:

(1) from the permittee to any person if the person initiates or participates in any administrative proceeding reviewing enforcement actions upon a finding that a violation of the act, rules or permit has occurred, or that an imminent hazard existed, and the district court or director determines that the person made a substantial contribution to the issues' full and fair determination, except that a person's contribution who did not initiate a proceeding must be separate and distinct from the contribution a person initiating the proceeding made;

(2) from the mining and minerals division to a person, other than the permittee or his representative, who initiates or participates in a proceeding under the act, prevails in whole or in significant part and achieves at least some degree of success on the merits, upon a finding that such person substantially contributed to the issues' full and fair determination, except that a person's contribution who did not initiate a proceeding must be separate and distinct from the contribution a person initiating the proceeding made;

(3) from the mining and minerals division to a permittee where the permittee demonstrates that the director issued an order of cessation, a notice of violation or an order to show cause why the director should not suspend or revoke the permit in bad faith and for the purpose of harassing or embarrassing the permittee;

(4) from a person to a permittee where the permittee demonstrates that the person initiated a proceeding or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the per-

mittee; or

(5) from a person to the mining and minerals division where it demonstrates that a person applied for review or any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the mining and minerals division.

**F. Awards.** An award under these sections may include all costs and expenses, including attorneys' fees and expert witness fees, a party reasonably incurred as a result of initiation or participation in a proceeding under the act; and all costs and expenses, including attorneys' fees and expert witness fees, a party reasonably incurred in seeking the award.

**G. Appeals.** Any person aggrieved by a director's decision concerning the award of costs and expenses in an administrative proceeding under this act may appeal such award to the district court as set forth in 19.8.12.1202 NMAC. [19.8.12.1204 NMAC - N, 4-28-2006]

## NEW MEXICO DEPARTMENT OF HEALTH

This is an amendment to 7.4.3 NMAC, Section 13, effective 04/28/2006.

### 7.4.3.13 NOTIFIABLE ~~DIS-EASES/CONDITIONS~~ DISEASES OR CONDITIONS IN NEW MEXICO:

A. All reports must include:

- (1) the disease or problem being reported;
- (2) patient's name, date of birth/age, gender, race/ethnicity, address, telephone number, and occupation;
- (3) ~~physician's (or laboratory's)~~ physician or licensed healthcare professional (or laboratory) name and telephone number;
- (4) laboratory or clinical samples for conditions marked with (\*) are ~~requested~~ required to be sent to the scientific laboratory division;
- (5) the epidemiology and response division will provide guidance about what information to include for laboratory-confirmed influenza cases.

B. Emergency reporting of ~~communicable~~ diseases or conditions: The following diseases, confirmed or suspected, require **immediate reporting** by telephone to ~~the office of~~ epidemiology and response division at (505) 827-0006. If no answer, call (505) 984-7044.

(1) Infectious diseases:

- (a) anthrax\*;
- (b) avian influenza\*;
- ~~(b)~~ (c) botulism (any type) \*;
- ~~(e)~~ (d) cholera
- ~~(b)~~ (e) diphtheria\*;

~~(e)~~ (f) haemophilus influenzae invasive infections\*;

~~(f)~~ (g) measles;

~~(g)~~ (h) meningococcal infections, invasive\*;

~~(h)~~ (i) pertussis\*;

~~(i)~~ (j) plague\*;

~~(j)~~ (k) poliomyelitis, paralytic;

~~(k)~~ ~~Q fever;~~

(l) rabies;

(m) rubella (incl congenital);

(n) severe acute respiratory syndrome (SARS)\*;

(o) smallpox\*;

(p) tularemia\*;

(q) typhoid fever\*;

(r) yellow fever.

(2) Other conditions:

(a) suspected foodborne illness in two or more unrelated persons\*;

(b) suspected waterborne illness in two or more unrelated persons\*;

(c) illnesses suspected to be caused by the intentional or accidental release of biologic or chemical agents\*;

(d) acute illnesses of any type involving large numbers of persons in the same geographic area;

(e) severe smallpox vaccine reaction (includes accidental implantation, eczema vaccinatum, generalized vaccinia, progressive vaccinia);

(f) other conditions of public health significance.

(3) Infectious diseases in animals:

(a) anthrax;

(b) plague;

(c) rabies;

(d) tularemia.

C. Routine reporting:

(1) Infectious diseases (report case within 24 hours to ~~the office of~~ epidemiology and response division at 1-800-432-4404 or 505-827-0006; or contact the local health office).

(a) brucellosis;

(b) campylobacter infections;

(c) coccidioidomycosis;

(d) Colorado tick fever;

(e) cryptosporidiosis;

(f) cysticercosis;

(g) cyclosporiasis;

(h) E. coli 0157:H7 infections\*;

(i) E. coli, shiga-toxin producing (STEC) infections\*;

(j) encephalitis, other;

(k) giardiasis;

(l) Group A streptococcal invasive infections\*;

(m) Group B streptococcal invasive infections\*;

(n) hantavirus pulmonary syndrome;

(o) hemolytic uremic syndrome, postdiarrheal;

(p) hepatitis A, acute;

(q) hepatitis B, acute or chronic;

(r) hepatitis C, acute or chronic;

(s) hepatitis E, acute;

(t) influenza, laboratory confirmed only[~~z~~] (Paragraph 5 of Subsection A of 7.4.3.13 NMAC);

(u) legionnaires' disease;

(v) leprosy;

(w) leptospirosis;

(x) listeriosis\*;

(y) lyme disease;

(z) malaria;

(aa) mumps;

(bb) psittacosis;

(cc) q fever;

~~(ee)~~ (dd) relapsing fever;

~~(dd)~~ (ee) Rocky Mountain spotted fever;

~~(ee)~~ (ff) salmonellosis\*;

~~(ff)~~ (gg) shigellosis\*;

~~(gg)~~ (hh) St. Louis encephalitis infections;

~~(hh)~~ (ii) streptococcus pneumoniae, invasive infections\*;

~~(ii)~~ (jj) tetanus;

~~(jj)~~ (kk) trichinosis;

~~(kk)~~ (ll) toxic shock syndrome;

~~(ll)~~ (mm) varicella;

~~(mm)~~ (nn) vibrio infections\*;

~~(nn)~~ (oo) west nile virus infections;

~~(oo)~~ (pp) western equine encephalitis infections;

~~(pp)~~ (qq) yersinia infections\*.

(2) Infectious diseases in animals (report case within 24 hours to ~~the office of~~ epidemiology and response division at 1-800-432-4404 or 505-827-0006; or contact the local health office).

(a) arboviral, other;

(b) brucellosis;

(c) psittacosis;

(d) west nile virus infections.

(3) Tuberculosis\* or other nontuberculous mycobacterial infections. Report suspect or confirmed cases within 24 hours to tuberculosis program, NM Department of Health, P. O. Box 26110, Santa Fe, NM 87502-6110; or call 505-827-2474 or 505-827-2473.

(4) Sexually transmitted diseases.

Report to infectious disease bureau - STD program, NM Department of Health, P.O. Box 26110, Santa Fe, NM 87502-6110, fax 505-476-3638; or call 505-476-3636.

(a) chancroid;

(b) chlamydia trachomatis infections;

(c) gonorrhoea;

(d) syphilis.

(5) HIV (human immunodeficiency virus) and AIDS (acquired immunodeficiency syndrome). Report to ~~office of epidemiology;~~ HIV/AIDS epidemiology unit, 625 Silver SW suite 412, Albuquerque, NM 87102, fax 505 841 5985; or call 505 841 5893 or 1 888 878 8992 program, 1190 St. Francis Dr., N1350, Santa Fe, NM 87502,



fax 505-476-3544 or call 505-476-3515.

(a) HIV: (1) confirmed positive HIV antibody test (screening test plus confirmatory test), or (2) any test for HIV RNA or HIV cDNA ("viral load"), or (3) any test to detect HIV proteins, or (4) any positive HIV culture, or (5) any other test or condition indicative of HIV infection as defined by the United States centers for disease control and prevention.

(b) AIDS: Opportunistic infections, cancers, CD4 lymphocyte count (<200 per uL or <14 percent of total lymphocytes), or any condition indicative of AIDS.

(6) Occupational illness and injury. Report to New Mexico occupational health registry, MSC 105550, 1 university of New Mexico, Albuquerque, NM 87131-0001.

- (a) asbestosis;
- (b) chronic beryllium lung disease;
- (c) coal worker's pneumoconiosis;
- (d) heavy metal poisoning;
- (e) hypersensitivity pneumonitis;
- (f) mesothelioma;
- (g) noise induced hearing loss;
- (h) occupational asthma;
- (i) occupational pesticide poisoning;

~~(g)~~ (j) silicosis;  
~~(h)~~ (k) other illnesses related to occupational exposure.

(7) Health conditions related to environmental exposures and certain injuries. Report to ~~office of~~ epidemiology and response division, NM Department of Health, P.O. Box 26110, Santa Fe, NM 87502-6110; or call 1-800-432-4404 or 505-827-0006.

- ~~(a) drug overdose;~~
- ~~(b) firearm injuries;~~
- ~~(c) lead (all blood levels);~~
- ~~(d) pesticide poisoning;~~
- ~~(e) spinal cord injuries;~~
- ~~(f) traumatic brain injuries;~~
- ~~(g) other environmentally induced health conditions.]~~

- (a) Environmental exposures:
  - (i) acetylcholinesterase (all blood levels);
  - (ii) all pesticide poisoning;
  - (iii) arsenic in urine greater than 50 micrograms/liter;
  - (iv) infant methemoglobinemia;
  - (v) lead (all blood levels);
  - (vi) mercury in urine greater than 3 micrograms/liter and/or mercury in blood greater than 5 micrograms/liter;
  - (vii) other suspected

environmentally-induced health conditions.

- (b) Select injuries:
  - (i) drug overdose;
  - (ii) firearm injuries;
  - (iii) spinal cord injuries;
  - (iv) traumatic brain injuries.

(8) Adverse vaccine reactions. Report to vaccine adverse events reporting system, [\[http://www.vaers.org\]](http://www.vaers.org) <http://www.vaers.hhs.org>. Send copy of report to immunization program vaccine manager, NM Department of Health, P.O. Box 26110, Santa Fe, NM 87502-6110; fax 505-827-1741.

(9) Cancer. Report to New Mexico tumor registry, university of New Mexico school of medicine, Albuquerque, NM 87131. Report all malignant and in situ neoplasms and all intracranial neoplasms, regardless of the tissue of origin.

(10) Human papillomavirus (HPV). Laboratories report the following tests to New Mexico HPV Pap Registry, 1816 Sigma Chi Rd NE, Albuquerque, NM 87131, phone (505) 272-5785 or (505) 277-0266:

- (a) papanicolaou test results (all results);
- (b) cervical pathology results (all results);
- (c) HPV test results (all results).
- ~~[(+)]~~ (11) Birth defects~~[-]~~ and congenital hearing loss.

(a) Report to ~~birth defects registry,~~ children's medical services, 2040 S. Pacheco, Santa Fe, NM 87505; or call ~~[505-476-8854]~~ 505-476-8868.

(b) All birth defects diagnosed by age ~~[44]~~ 4 years, including:

- (i) defects diagnosed during pregnancy;
- (ii) defects diagnosed on fetal deaths.

(c) Suspected or confirmed congenital hearing loss in one or both ears.

(d) All conditions identified through statewide newborn genetic screening.

[7.4.3.13 NMAC - Rp, 7 NMAC 4.3.12, 8/15/2003; A, 04/28/2006]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an emergency amendment to 1.13.7 NMAC, Sections 11 and 14, effective April 14, 2006.

### 1.13.7.11 FUNDING AND COMPENSATION:

A. The New Mexico office of the state historian scholars program is a

pilot project, currently funded through a one-year special appropriation expiring June 30, 2006.

B. Although an applicant shall request, pursuant to 1.13.7.10 NMAC, a fellowship for a given amount, duration and time, the decisions concerning these issues shall be made by the fellowship awards committee and shall be based on funding availability, the nature of the proposed research and access to collections and the number of fellowships awarded. All research conducted under a fellowship shall be completed by the end date of the fellowship period and, in all cases, no later than ~~May 31, 2006~~ June 30, 2006.

C. A successful applicant shall enter into an acceptance agreement issued by the state records center and archives, which shall describe the specific research topic, research requirements, specific deliverables, timetables and compensation provisions.

D. As set forth in 1.13.7.8 NMAC, compensation shall not exceed \$1000 per month and shall be rendered on a reimbursement basis. For fellowship of one-month duration, payment shall be made at the conclusion of the fellowship, subject to the successful completion of all fellowship requirements and the submittal of an itemized accounting of expenses, including receipts, for which reimbursement is sought. For fellowship of duration of longer than one month, reimbursement may be made monthly, subject to the successful completion of identified deliverables and submittal of an itemized accounting of expenses, including receipts, for which reimbursement is sought. The reimbursement requirements shall be delineated in the acceptance agreement.

[1.13.7.11 NMAC - N, 06/30/05; A/E, 04/14/06]

### 1.13.7.14 TIMETABLE - APPLICATIONS AND AWARDS:

A. Completed applications shall be received in the state records center and archives by 3:00 pm, on August 1, 2005 and January 1, 2005 respectively as the two deadlines set by the call for applications.

B. The staff of the state records center and archives shall conduct an initial review to determine if applications are complete and applicants meet minimum qualification within ten working days of the receipt of applications.

C. The fellowship review committee shall conduct its review and evaluation process of qualifying applications and award fellowships within one month of receipt of applications.

D. Successful applicants shall notify the state records center and archives (office of the state historian) of

their acceptance or rejection of fellowships within five days of notification. Notification shall be made by e-mail, or if the applicant has no e-mail address, by registered U.S. mail, return receipt requested.

**E.** Acceptance agreements shall be completed and signed prior to the beginning of research or within one month of notification of acceptance, which ever is earlier.

**F.** All research and deliverables identified in the acceptance agreement shall be completed by the end of the fellowship period, but in all cases no later than ~~May 31, 2006~~ **June 30, 2006**.  
[1.13.7.14 NMAC - N, 06/30/05; A/E, 04/14/06]

**NEW MEXICO PUBLIC  
REGULATION  
COMMISSION  
INSURANCE DIVISION**

Effective July 1, 2006, the Public Regulation Commission repeals 13.14.16 NMAC, Agent's Statistical Report, filed 6-1-05.

Effective July 1, 2006, the Public Regulation Commission repeals 13.14.17 NMAC, Underwriter's Statistical Report, filed 6-1-05.

**NEW MEXICO PUBLIC  
REGULATION  
COMMISSION  
INSURANCE DIVISION**

**TITLE 13 INSURANCE  
CHAPTER 14 TITLE INSURANCE  
PART 16 AGENT'S STATISTICAL REPORT**

**13.14.16.1 ISSUING AGENCY:** Public Regulation Commission, Insurance Division, Title Insurance Bureau.  
[13.14.16.1 NMAC - Rp, 13.14.16.1 NMAC, 7-1-06]

**13.14.16.2 SCOPE:** This rule applies to all title insurers and title insurance agents conducting title insurance business in New Mexico.  
[13.14.16.2 NMAC - Rp, 13.14.16.2 NMAC, 7-1-06]

**13.14.16.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 59A-30-4, 59A-30-7, and 59A-30-12.  
[13.14.16.3 NMAC - Rp, 13.14.16.3 NMAC, 7-1-06]

**13.14.16.4 DURATION:** Permanent.

[13.14.16.4 NMAC - Rp, 13.14.16.4 NMAC, 7-1-06]

**13.14.16.5 EFFECTIVE DATE:** July 1, 2006, unless a later date is cited at the end of a section.  
[13.14.16.5 NMAC - Rp, 13.14.16.5 NMAC, 7-1-06]

**13.14.16.6 OBJECTIVE:** The purpose of this rule is to provide forms for preparing the required agent's statistical report.  
[13.14.16.6 NMAC - Rp, 13.14.16.6 NMAC, 7-1-06]

**13.14.16.7 DEFINITIONS:** See 13.14.1 NMAC.  
[13.14.16.7 NMAC - Rp, 13.14.16.7 NMAC, 7-1-06]

**13.14.16.8 ANNUAL STATISTICAL REPORT REQUIRED:** All agencies, whether independent, affiliated, or direct operations, must complete all parts of this statistical report in accordance with the instructions issued annually by the title insurance bureau for the next year's reporting (e.g., instructions issued in 2005 shall be used for reporting 2006 calendar year data; the report of 2006 data shall be filed in 2007).

[13.14.16.8 NMAC - Rp, 13.14.16.8 NMAC, 7-1-06]

**13.14.16.9 SCHEDULE A - STATEMENT OF INCOME AND EXPENSES:**

*[Please see Table on page 453]*

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE A - STATEMENT OF INCOME AND EXPENSES For the Calendar Year Ending December 31, 20__.		
<b>AGENCY NAME</b>		
<b>FEDERAL I.D. NUMBER</b>		
<b>ADDRESS</b>		
<b>CONTACT NAME</b>		
<b>Check one:</b>		
<input type="checkbox"/>	INDEPENDENT	Title insurance agencies that are independently owned and write title insurance business for one or more underwriting companies.
<input type="checkbox"/>	AFFILIATED	A title insurance agency is an affiliated agency if 10% or more of its ownership is held by a title insurance underwriter or if it is a member of a holding company structure that includes an underwriter.
<input type="checkbox"/>	DIRECT	A direct operation has 100% of its ownership held directly by a title insurance underwriter.
<b>Part A: Revenue</b>		
1.	Title insurance written premiums (from Schedule B)	
2.	Less: Remitted title insurance premiums (from Schedule B)	
3.	Retained title insurance premiums (from Schedule B)	
4.	Other income (from Schedule C)	
5.	<b>Total Revenue</b>	
<b>Part B: Expenses</b>		
1.	Employees' salaries and wages	
2.	Owners' and partners' salaries and wages	
3.	Employee benefits	
4.	Rent	
5.	Insurance	
6.	Legal expense	
7.	Licenses, taxes and fees	
8.	Title plant expense and maintenance	
9.	Office supplies	
10.	Depreciation	
11.	Automobile expense	
12.	Communication expense	
13.	Education expense	
14.	Bad debts	
15.	Interest expense	
16.	Employee travel and lodging	
17.	Loss and loss adjustment expense (from Schedule D)	
18.	Accounting and auditing expense	
19.	Public relations expense	
20.	Other expenses (from Schedule E)	
21.	<b>Total Expenses</b>	
<b>Part C: Net Income for Ratemaking Purposes</b>		
1.	<b>Income (Loss) from Operations</b>	
<b>Part D: Excluded Expenses</b>		
1.	NMLTA lobbying expense	
2.	Direct lobbying expense	
3.	Political contributions	
4.	State and federal income tax expense	
5.	½ of meals and entertainment expense	
6.	Penalties	
7.	Country club dues	
8.	Salaries in excess of salary cap	
9.	Other excluded expenses (from Schedule E)	
10.	<b>Total Excluded Expenses</b>	
<b>Part E: Net Income</b>		
1.	<b>Net income as reported on the books of the agency</b>	
<b>Part F: Equity</b>		
Total equity as reported on balance sheet of the agency		

[13.14.16.9 NMAC - Rp, 13.14.16.9 NMAC, 7-1-06]

13.14.16.10 SCHEDULE B - PREMIUMS BY UNDERWRITER:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE B - PREMIUMS BY UNDERWRITER For the Calendar Year Ending December 31, 20___.			
Name of each underwriting company for which this agency charged premiums	Title premiums charged by this agency	Title premiums remitted or owed by this agency to underwriters	Title premiums retained by this agency
<b>Total</b>			
	(Carry total forward to Schedule A, line A -1)	(Carry total forward to Schedule A, line A -2)	(Carry total forward to Schedule A, line A -3)
Percentage of premiums remitted: 0.0%			

[13.14.16.10 NMAC - Rp, 13.14.16.10 NMAC, 7-1-06]

13.14.16.11 SCHEDULE C - IDENTIFICATION OF OTHER INCOME

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE C - IDENTIFICATION OF OTHER INCOME For the Calendar Year Ending December 31, 20___.		
<b>Description of Income Item</b>		
A.	Closing fees	
B.	Abstracting and title report income	
C.	Recording fees	
D.	Copy fees	
E.	Inspection fees	
F.	Interest income	
<b>Itemization of All Other Income</b>		
G.		
H.		
I.		
J.		
K.		
L.		
M.		
N.		
O.		
P.		
Q.		
R.		
S.		
Total Other Income (Carry forward to Schedule A, line A -4)		0

[13.14.16.11 NMAC - Rp, 13.14.16.11 NMAC, 7-1-06]

13.14.16.12 SCHEDULE D - LOSSES AND LOSS ADJUSTMENT EXPENSES:

<b>NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT</b> <b>SCHEDULE D - LOSSES AND LOSS ADJUSTMENT EXPENSES</b> For the Calendar Year Ending December 31, 20___.		
<b>Description of Expense Item</b>		
1.	Closing Losses	
2.	Agent Errors	
3.	Unfair Trade Practices	
4.	Loss Adjustment Expenses	
5.	E&O or Fidelity Insurance	
<b>Total</b> (Carry forward to Schedule A, line B -17)		

[13.14.16.12 NMAC - Rp, 13.14.16.12 NMAC, 7-1-06]

13.14.16.13 SCHEDULE E - IDENTIFICATION OF OTHER EXPENSES:

<b>NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT</b> <b>SCHEDULE E - IDENTIFICATION OF OTHER EXPENSES</b> For the Calendar Year Ending December 31, 20___.		
<b>Part A - Deductible Expenses</b>		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
<b>Total</b> (Carry forward to Schedule A, line B -20)		0
<b>Part B - Excluded Expenses</b>		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
<b>Total</b> (Carry forward to Schedule A, line D -8)		0

[13.14.16.13 NMAC - Rp, 13.14.16.13 NMAC, 7-1-06]

13.14.16.14 SCHEDULE F - UNDERWRITER EXPENSE ALLOCATION:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE F - UNDERWRITER EXPENSE ALLOCATION For the Calendar Year Ending December 31, 20__.		
Direct or Affiliated Underwriter	Total Expenses Allocated	
	To Underwriter	From Underwriter
<b>Total</b>	0	0

[13.14.16.14 NMAC - Rp, 13.14.16.14 NMAC, 7-1-06]

13.14.16.15 SCHEDULE G - INCOME OR EXPENSE ALLOCATION FROM OTHER AFFILIATED ENTITIES:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE G - INCOME OR EXPENSE ALLOCATION FROM OTHER AFFILIATED ENTITIES For the Calendar Year Ending December 31, 20__.				
1 Name and Address of Affiliated Agency	2 Relation to Your Agency	3 Amount	4 Description Code	5 Reported Elsewhere in this Report?
	<b>Total</b>	0		

Description	Code
Income	I
Expense Allocation	E

[13.14.16.15 NMAC - Rp, 13.14.16.14 NMAC, 7-1-06]

13.14.16.16 SCHEDULE H - PREMIUMS BY COUNTY:

<p><b>NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT</b>  <b>SCHEDULE H - PREMIUMS BY COUNTY</b>                  For the Calendar Year Ending December 31, 20__.</p>
--

COUNTY	TITLE PREMIUMS WRITTEN
Bernalillo	
Catron	
Chaves	
Cibola	
Colfax	
Curry	
De Baca	
Eddy	
Grant	
Guadalupe	
Harding	
Hidalgo	
Lea	
Lincoln	
Los Alamos	
Luna	
McKinley	
Mora	
Otero	
Quay	
Rio Arriba	
Roosevelt	
San Juan	
San Miguel	
Sandoval	
Santa Fe	
Sierra	
Socorro	
Taos	
Torrance	
Union	
Valencia	
<b>TOTAL</b>	

Crosscheck with Schedule B	0
Difference	0

Explanation for Difference (if any)

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[13.14.16.16 NMAC - Rp, 13.14.16.15 NMAC, 7-1-06

13.14.16.17 SCHEDULE I - IDENTIFICATION OF OWNERS:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE I - IDENTIFICATION OF OWNERS For the Calendar Year Ending December 31, 20__.		
1	2	3
Name of Each Individual or Entity	Percentage of Agency Owned	Description Code (see below)
<b>TOTAL</b>		

Description	Code
Attorney	A
Real Estate Agent	REA
Real Estate Developer	RED
Lending institution	L
Underwriter	UW
None of the above	NA

[13.14.16.17 NMAC - Rp, 13.14.16.16 NMAC, 7-1-06]

**HISTORY OF 13.14.16 NMAC:**

**Pre-NMAC History.**

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3-7-74  
 SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9-6-85  
 SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5-9-86

**History of Repealed Material.**

13.14.16 NMAC, Agent's Experience Report (filed 4-28-00), repealed 7-1-05

**Other History.**

That applicable portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5-9-86) was replaced by 13 NMAC 14.3 Subpart C, Agent's Experience Report, effective 11-01-96.  
 13 NMAC 14.3 Subpart C, Agent's Experience Report (filed 10-2-96) was renumbered and replaced by 13.14.16 NMAC, Agent's Experience Report, effective 5-15-00.  
 13.14.16 NMAC, Agent's Experience Report (filed 4-28-00); replaced by 13.14.16 NMAC, Agent's Statistical Report, effective 7-1-05.

<p><b>NEW MEXICO PUBLIC REGULATION COMMISSION</b> INSURANCE DIVISION</p> <p><b>TITLE 13 INSURANCE</b> <b>CHAPTER 14 TITLE INSURANCE</b> <b>PART 17 UNDERWRITER'S</b> <b>STATISTICAL REPORT</b></p> <p><b>13.14.17.1 ISSUING AGENCY:</b> Public Regulation Commission, Insurance Division, Title Insurance Bureau. [13.14.17.1 NMAC - Rp, 13.14.17.1 NMAC, 7-1-06]</p>	<p><b>13.14.17.2 SCOPE:</b> This rule applies to all title insurers conducting title insurance business in New Mexico. [13.14.17.2 NMAC - Rp, 13.14.17.2 NMAC, 7-1-06]</p> <p><b>13.14.17.3 STATUTORY AUTHORITY:</b> NMSA 1978 Sections 59A-30-4, 59A-30-7, 59A-30-12. [13.14.17.3 NMAC - Rp, 13.14.17.3 NMAC, 7-1-06]</p> <p><b>13.14.17.4 DURATION:</b> Permanent. [13.14.17.4 NMAC - Rp, 13.14.17.4</p>	<p>NMAC, 7-1-06]</p> <p><b>13.14.17.5 EFFECTIVE DATE:</b> July 1, 2006, unless a later date is cited at the end of a section. [13.14.17.5 NMAC - Rp, 13.14.17.5 NMAC, 7-1-06]</p> <p><b>13.14.17.6 OBJECTIVE:</b> The purpose of this rule is to provide a form for preparing the required underwriter's statistical report. [13.14.17.6 NMAC - Rp, 13.14.17.6 NMAC, 7-1-06]</p> <p><b>13.14.17.7 DEFINITIONS:</b> See</p>
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13.14.1 NMAC.

[13.14.17.7 NMAC - Rp, 13.14.17.7 NMAC, 7-1-06]

**13.14.17.8 ANNUAL STATISTICAL REPORT REQUIRED:** All licensed title insurers must complete all parts of this statistical report in accordance with the instructions issued annually by the title insurance bureau for the next year's reporting (e.g., instructions issued in 2005 shall be used for reporting 2006 calendar year data; the report of 2006 data shall be filed in 2007).

[13.14.17.8 NMAC - Rp, 13.14.17.8 NMAC, 7-1-06]

**13.14.17.9 FORM 1 - STATEMENT OF INCOME AND EXPENSES:**

NEW MEXICO TITLE INSURERS STATISTICAL REPORT FORM 1 - STATEMENT OF INCOME AND EXPENSES For the Calendar Year Ending December 31, 20__ NEW MEXICO EXPERIENCE ONLY							
Insurance Company							
NAIC Code							
		Direct Operations	Non-Affiliated Agency Operations	Affiliated Agency Operations	Total	NAIC Annual Statement Schedule T	Difference
<b>Part A - Revenue</b>							
1	Direct written premiums				0		0
2	Direct written premiums retained by agent				0		
3	Direct written premiums remitted to underwriter	0	0	0	0		
4	Escrow and settlement service charges				0		
5	Other title fees and service charges				0		
6	Total other income	0	0	0	0		0
7	<b>Total revenue</b>	0	0	0	0		
<b>Part B - Home office Expenses</b>							
1	Losses and loss adjustment expenses incurred				0		
2	Total personnel costs				0		
3	Total production services purchased outside				0		
4	Advertising				0		
5	Boards, bureaus, and associations				0		
6	Title plant rent and maintenance				0		
7	Claim adjustment services				0		
8	Amounts charged off, net of recoveries				0		
9	Marketing and promotional expenses				0		
10	Insurance				0		
11	Directors' fees				0		
12	Travel and travel items				0		
13	Rent and rent items				0		
14	Equipment				0		
15	Cost or depreciation of EDP equipment and software				0		
16	Printing, stationery, books, and periodicals				0		
17	Postage, telephone, messenger, and express				0		
18	Legal and auditing				0		
19	Total taxes, licenses, and fees				0		
20	Real estate expenses				0		
21	Real estate taxes				0		
22	Aggregate write-ins for miscellaneous expenses				0	Form 2: Part A	Difference

23	Less: expenses allocated to affiliated agents and direct operations				0	0	0
24	<b>Total Home Office Expenses</b>	0	0	0	0		
<b>Part C - Net Income Before Affiliated and Direct Operations</b>							
1	Income (Loss) before affiliated and direct operations	0	0	0	0		
<b>Part D - Affiliated Agents and Direct Operations Expenses</b>							
1	Employees' salaries and wages						
2	Owners' and partners' salaries						
3	Employee benefits						
4	Rent						
5	Insurance						
6	Legal expenses						
7	Licenses, taxes, and fees						
8	Title plant expense and maintenance						
9	Office supplies						
10	Depreciation						
11	Automobile expenses						
12	Communications expenses						
13	Education expenses						
14	Bad debts						
15	Interest expenses						
16	Employee travel and lodging						
17	Loss and loss adjustment expenses						
18	Accounting and auditing expenses						
19	Public relations expenses						
20	Other expenses					Form 2	Difference
21	<b>Total Expenses from Affiliated Agents and Direct Operations</b>	0		0	0	0	0
<b>Part E - Net Income from Operations</b>							
1	<b>INCOME (LOSS)</b>	0	0	0	0		

[13.14.17.9 NMAC - Rp, 13.14.17.9 NMAC, 7-1-06]

13.14.17.10 FORM 2 - EXPENSE ALLOCATIONS TO AND FROM AGENTS:

<p><b>NEW MEXICO TITLE INSURERS STATISTICAL REPORT</b>  <b>FORM 2 - EXPENSE ALLOCATIONS TO AND FROM AGENTS</b>                  For the Calendar Year Ending December 31, 20__  <b>NEW MEXICO EXPERIENCE ONLY</b></p>		
<b>Insurance Company</b>		
<b>PART A: EXPENSES ALLOCATED TO AFFILIATED AND DIRECT AGENTS</b>		
<b>Name of Agency</b>	<b>Type of Agency (see code)</b>	<b>Amount</b>
<b>Total</b>		0

EXPENSES ALLOCATED FROM AFFILIATED AND DIRECT AGENTS		
Name of Agency	Type of Agency (see code)	Amount
<b>Total</b>		<b>0</b>

Type of Agency	Code
Direct	D
Affiliated	A

[13.14.17.10 NMAC - Rp, 13.14.17.10 NMAC, 7-1-06]

**13.14.17.11 FORM 3 - RESERVES, INVESTMENT GAIN, AND SURPLUS:**

NEW MEXICO TITLE INSURERS STATISTICAL REPORT FORM 3 - RESERVES, INVESTMENT GAIN , AND SURPLUS For the Calendar Year Ending December 31, 20__ COUNTRYWIDE EXPERIENCE		
Insurance Company		Countrywide
1	Known claims reserve	
2	Statutory premium reserve	
3	Aggregate of other reserves required by law	
4	Supplemental reserve	
5	Total reserves	0
6	Net investment income earned	
7	Net realized capital gains (losses)	
8	Total net investment gain	
9	Federal and foreign income taxes incurred	
10	Surplus as regards policyholders	

[13.14.17.11 NMAC - Rp, 13.14.17.11 NMAC, 7-1-06]

**13.14.17.12 FORM 4 - TRANSACTION REPORT:**

NEW MEXICO TITLE INSURERS STATISTICAL REPORT FORM 4 - TRANSACTION REPORT For the Calendar Year Ending December 31, 20__ NEW MEXICO EXPERIENCE ONLY						
Insurance Company		Transaction Type	NMAC Rate Provision	No. of Transactions	Premiums	Dependent on basic premium rate?
NM Form No.	Trans action code					
none	0001	Charge for Additional Chain of Title	13.14.9.16			No
none	0002	Charge for Unplatted Tract of Unusual Complexity	13.14.9.16			Yes
none	0003	Abstract Retirement Credit	13.14.9.24			Yes
none	0004	Loan Policy Insuring Construction Policy - Mechanic's Lien Coverage With Evidence Of Priority	13.14.9.40G			No
none	0005	Loan Policy Insuring Construction Policy - Mechanic's Lien Coverage Without Evidence Of Priority	13.14.9.40G			Yes
none	0006	Owner's Policy - Mechanic's Lien Coverage - Filing Period Expired	13.14.10.9A			No
none	0007	Owner's Policy - Mechanic's Lien Coverage - Filing Period Not Expired	13.14.10.9B			Yes

none	0008	Survey Coverage Endorsement	13.14.10.10		Yes
none	0009	Duplicate Original Policy	13.14.9.33		No
none	0010	Navigable Streams, Lakes, etc. - Standard Exception 6	13.14.10.29		No
none	0011	Permissible Modification - Standard Exception No. 7	13.14.10.35		No
none	0012	Waiver of Arbitration	None		No
none	0013	Cancellation Fee	13.14.9.19B		No
none	0014	Permissible Deletion - Standard Exception No. 8	13.14.10.46		No
1	0101	Owner's Policy	13.14.9.20		Yes
1	0102	Owner's Policy - With Bulk Rate	13.14.9.23		Yes
1	0103	Multiple Owner's on Same Land - Simultaneous Issue	13.14.9.32		Yes
1	0104	Replacement Owner's Policy	13.14.9.26		Yes
1	0110	Owner's Policy - Reissue (10% Discount)	13.14.9.35		Yes
1	0115	Owner's Policy - Reissue (15% Discount)	13.14.9.35		Yes
1	0120	Owner's Policy - Reissue (20% Discount)	13.14.9.35		Yes
1	0125	Owner's Policy - Reissue (25% Discount)	13.14.9.35		Yes
2	0201	Loan Policy - Single Issue	13.14.9.22		Yes
2	0202	Loan Policy - Simultaneous Issue with Owner's Policy	13.14.9.30		No
2	0203	Loan Policy - Second Mortgage or Subsequent Issue	13.14.9.36		Yes
2	0204	Replacement Loan Policy	13.14.9.26		Yes
2	0240	Loan Policy - Substitution Rate (less than 2 years - 40%)	13.14.9.39		Yes
2	0245	Loan Policy - Substitution Rate (more than 2 years, less than 3 - 45%)	13.14.9.39		Yes
2	0250	Loan Policy - Substitution Rate (more than 3 years, less than 4 - 50%)	13.14.9.39		Yes
2	0255	Loan Policy - Substitution Rate (more than 4 years, less than 5 - 55%)	13.14.9.39		Yes
2	0260	Loan Policy - Substitution Rate (more than 5 years, less than 6 - 60%)	13.14.9.39		Yes
2	0265	Loan Policy - Substitution Rate (more than 6 years, less than 7 - 65%)	13.14.9.39		Yes
2	0270	Loan Policy - Substitution Rate (more than 7 years, less than 8 - 70%)	13.14.9.39		Yes
2	0275	Loan Policy - Substitution Rate (more than 8 years, less than 9 - 75%)	13.14.9.39		Yes
2	0280	Loan Policy - Substitution Rate (more than 9 years, less than 10 - 80%)	13.14.9.39		Yes
3	0300	Construction Loan Policy	13.14.9.40A		Yes
6	0600	Commitment for Title Insurance	13.14.9.19A		No
7	0700	U.S. Policy, ALTA 1963	13.14.9.25		Yes
9	0900	Notice of Availability of Owner's Title Insurance	None		No
10	1000	Facultative Reinsurance Agreement	None		No
11	1101	Construction Loan Extension Endorsement	13.14.9.40B		No
11	1102	Pending Disbursement Clause - Subsequent Attachment	13.14.9.40F		No
11	1103	Pending Disbursement Clause - Simultaneous Insertion or Attachment	13.14.9.40F		No
11	1104	Correction/Multipurpose Endorsement	13.14.8.8		No
11	1105	Renewal, Extension, Modification & Partial Release Endorsement	13.14.10.20		No
11	1106	Extension of Commitment for Title Insurance	13.14.9.19A		No
11	1108	Increase in Coverage	13.14.6.8D		Yes
12	1200	Condominium Endorsement to Loan Policy (ALTA 4)	13.14.10.14		No
13	1300	Planned Unit Development Endorsement (ALTA 5)	13.14.10.15		No
14	1400	Variable Rate Mortgage Endorsement (ALTA 6)	13.14.10.12		No
15	1500	Variable Rate Mortgage Endorsement - Negative Amortization (ALTA 6.1)	13.14.10.12		No
16	1600	Manufactured Housing Unit Endorsement (ALTA 7)	13.14.10.13		No
17	1700	Revolving Credit Endorsement	13.14.10.12		No
18	1800	Construction Loan Policy Endorsement A	13.14.9.40D		Yes
19	1900	Construction Loan Policy Endorsement D	13.14.9.40E		No
20	2001	Leasehold Owner's Endorsement (to create policy)	13.14.10.19		No
20	2002	Leasehold Loan Policy - Simultaneous Issue with Owner's Policy	13.14.9.30		No
20	2003	Leasehold Loan Policy - Subsequent Issue	13.14.9.31		Yes

20	2010	Leasehold Owner's Policy - Reissue (10% Discount)	13.14.9.35			Yes
20	2015	Leasehold Owner's Policy - Reissue (15% Discount)	13.14.9.35			Yes
20	2020	Leasehold Owner's Policy - Reissue (20% Discount)	13.14.9.35			Yes
20	2025	Leasehold Owner's Policy - Reissue (25% Discount)	13.14.9.35			Yes
21	2100	Leasehold Loan Endorsement (to create policy)	13.14.10.19			No
22	2200	Pending Disbursement Down Date Endorsement	13.14.10.18			No
23	2300	Pending Improvements Endorsement	13.14.10.23			No
24	2400	Assignment of Mortgage Endorsement0	13.14.10.8			
25	2500	Additional Advance Endorsement	13.14.10.11			No
26	2600	Partial Coverage Endorsement	None			No
27	2700	U. S. Policy, ALTA 1963 Down Date Endorsement	13.14.10.16			No
28	2800	Non-Imputation Endorsement	13.14.10.21			Yes
29	2900	Environmental Protection Lien Endorsement (ALTA 8.1)	13.14.10.22			No
30	3000	Condominium Endorsement to Owner's Policy	13.14.10.24			No
31	3100	Owner's Leasehold Conversion Endorsement (to create policy)	13.14.9.38			Yes
32	3200	Coordinate and Proportionate Endorsement	None			No
33	3300	Change of Name Endorsement	None			No
34	3400	U.S. Policy, ALTA 1991	13.14.9.25			Yes
36	3600	Limited Title Search Policy (LTSP)	13.14.9.27			No
37	3700	Continuation Endorsement for LTSP	13.14.10.25			No
38	3800	Revolving Credit, Variable Rate Endorsement For LTSP	13.14.10.26			No
39	3900	Lenders' Creditors' Rights Endorsement	13.14.10.28			No
40	4000	Owner's Creditors' Rights Endorsement	13.14.10.27			No
41	4100	Foreclosure Guarantee Policy 0	13.14.9.28			
42	4200	Foreclosure Guarantee Policy Down Date Endorsement	13.14.10.18			No
43	4300	Insuring Around Endorsement	None			No
44	4400	Revolving Credit, Increased Credit Limit Endorsement	13.14.10.30			No
45	4500	Residential Limited Coverage Junior Loan Policy	13.14.9.29			No
46	4600	Down Date Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.10.32			No
47	4700	Revolving Credit, Variable Rate Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.10.33			No
48	4800	Truth-in-Lending Endorsement	13.14.10.31			Yes
50	5000	Restrictions, Encroachments and Minerals Endorsement - Loan Policy (ALTA 9)	13.14.10.34			Yes
51	5100	Land Abuts Street Endorsement	13.14.10.36			No
52	5200	Designation of Improvements, Address Endorsement	13.14.10.37			No
53	5300	Same as Survey Endorsement	13.14.10.38			No
54	5400	Contiguity of Single Parcel Endorsement	13.14.10.39			No
55	5500	Named Insured Endorsement	13.14.10.40			No
56	5600	Restrictions, Encroachments, & Minerals Endorsement - Unimproved Land (ALTA 9.1)	13.14.10.34			Yes
57	5700	Restrictions, Encroachments, & Minerals Endorsement - Improved Land (ALTA 9.2)	13.14.10.34			Yes
58	5800	First Loss Endorsement	13.14.10.41			No
59	5900	Last Dollar Endorsement	13.14.10.42			No
60	6000	Loan Policy Aggregation Endorsement	13.14.10.43			No
61	6100	Foundation Endorsement	13.14.10.44			No
62	6200	Assignment of Rents/Leases Endorsement	13.14.10.45			No
63	6300	Short Form Residential Loan Policy	13.14.9.22			Yes
64	6400	Zoning Endorsement, Unimproved Land (ALTA 3.0)	13.14.10.47			Yes
65	6500	Zoning Endorsement, Completed Structure (ALTA 3.1)	13.14.10.48			Yes
66	6600	Contiguity of Multiple Parcels Endorsement	13.14.10.39			No
67	6700	Access and Entry Endorsement	13.14.10.49			No
		<b>TOTAL</b>				

Crosscheck with Form 1:	0
Difference	0

Explanation for Difference (if any)

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[13.14.17.12 NMAC - Rp, 13.14.17.12 NMAC, 7-1-06]

13.14.17.13 FORM 5 - LIABILITY DISTRIBUTION:

**NEW MEXICO TITLE INSURERS STATISTICAL REPORT**  
**FORM 5 - PREMIUM DISTRIBUTION BY LIABILITY RANGE**  
 For the Calendar Year Ending December 31, 20\_\_\_\_  
**NEW MEXICO EXPERIENCE ONLY**  
**TRANSACTIONS THAT ARE DEPENDENT ON THE BASIC PREMIUM RATE**  
 Note: Include all transactions listed as "Yes" in the "Dependent on Basic Premium Rate?" column of Form 4

Insurance Company			
Liability Range (\$000)		Number of transactions	Direct written premium
More than	But no more than		
0	5		
5	10		
10	20		
20	30		
30	40		
40	50		
50	60		
60	70		
70	80		
80	90		
90	100		
100	200		
200	300		
300	400		
400	500		
500	1,000		
1,000	2,000		
2,000	3,000		
3,000	4,000		
4,000	5,000		
5,000	10,000		
10,000	15,000		
15,000	25,000		
25,000	50,000		
50,000	75,000		
75,000	100,000		
Over 100,000			
ALL		0	0

Crosscheck with Form 4:	0
Difference	0

Explanation for Difference (if any)

[13.14.17.13 NMAC - Rp, 13.14.17.13 NMAC, 7-1-06]

13.14.17.14 FORM 6 - DIRECT PAID LOSS DEVELOPMENT:

NEW MEXICO TITLE INSURERS STATISTICAL REPORT FORM 6 - DIRECT PAID LOSS DEVELOPMENT For the Calendar Year Ending December 31, 20__ NEW MEXICO EXPERIENCE ONLY												
Insurance Company		CUMULATIVE PAID LOSSES AND ALLOCATED LOSS ADJUSTMENT EXPENSES AT YEAREND (000 OMITTED)									Number of claims closed with loss payment	Number of claims closed without loss payment
Years in which policies were written	Latest PY-9	Latest PY-8	Latest PY-7	Latest PY-6	Latest PY-5	Latest PY-4	Latest PY-3	Latest PY-2	Latest PY-1	Latest PY		
Prior												
Latest PY - 19												
Latest PY - 18												
Latest PY - 17												
Latest PY - 16												
Latest PY - 15												
Latest PY - 14												
Latest PY - 13												
Latest PY - 12												
Latest PY - 11												
Latest PY - 10												
Latest PY - 9												
Latest PY - 8												
Latest PY - 7												
Latest PY - 6												
Latest PY - 5												
Latest PY - 4												
Latest PY - 3												
Latest PY - 2												
Latest PY - 1												
Latest PY												

Note: Use the same reporting instructions as for Schedule P, Part 2A of the NAIC Annual Statement, except that loss and ALAE should be **direct of reinsurance** and should be **New Mexico** claims only.

	Latest PY -1	Latest PY
Total	0	0
Total payments during Latest PY		0
New Mexico direct losses paid as shown on NAIC Annual Statement Schedule T		
Difference		0

Explanation for Difference (if any)

[13.14.17.14 NMAC - Rp, 13.14.17.14 NMAC, 7-1-06]

13.14.17.15 FORM 7 - DIRECT CASE BASIS RESERVES:

NEW MEXICO TITLE INSURERS STATISTICAL REPORT FORM 7 - DIRECT CASE BASIS RESERVES For the Calendar Year Ending December 31, 20__ NEW MEXICO EXPERIENCE ONLY												
Insurance Company		Amount of insurance written in millions	CASE BASIS LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSE RESERVES AT YEAREND (000 OMITTED)									
Years in which policies were written	Direct Written Premium (\$000s)		Latest PY-9	Latest PY-8	Latest PY-7	Latest PY-6	Latest PY-5	Latest PY-4	Latest PY-3	Latest PY-2	Latest PY-1	Latest PY
Prior												
Latest PY - 19												
Latest PY - 18												
Latest PY - 17												
Latest PY - 16												
Latest PY - 15												
Latest PY - 14												
Latest PY - 13												
Latest PY - 12												
Latest PY - 11												
Latest PY - 10												
Latest PY - 9												
Latest PY - 8												
Latest PY - 7												
Latest PY - 6												
Latest PY - 5												
Latest PY - 4												
Latest PY - 3												
Latest PY - 2												
Latest PY - 1												
Latest PY												

Note: Use the same reporting instructions as for Schedule P, Part 2B of the NAIC Annual Statement, except that loss and ALAE should be direct of reinsurance and should be New Mexico claims only.

	Latest PY -1	Latest PY
Total	0	0
Increase in reserves during Latest PY		0
Total payments during Latest PY		0
Case incurred loss during Latest PY		0
New Mexico direct losses incurred as shown on NAIC Annual Statement Schedule T		
Difference		0



Explanation for Difference (if any)

[13.14.17.15 NMAC - Rp, 13.14.17.15 NMAC, 7-1-06]

#### HISTORY OF 13.14.17 NMAC:

##### History of Repealed Material.

13 NMAC 14.3.D.19 - Repealed 5-15-00

13.14.17 NMAC, Underwriter's Experience Report (filed 4-28-00), repealed 7-1-05

##### NMAC History.

13 NMAC 14.3 Subpart D, Underwriter's Experience Report (filed 05-30-97) renumbered, reformatted and replaced by 13.14.17 NMAC, Underwriter's Experience Report, effective 7-1-97.

13.14.17 NMAC, Underwriter's Experience Report (filed 4-28-00) was replaced by 13.14.17 NMAC, Underwriter's Statistical Report, effective 7-1-05.

## NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to Sections 7 and 22 of 13.14.1 NMAC, effective July 1, 2006.

#### 13.14.1.7 DEFINITIONS "A":

As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings.

**A. Abstract Plant.** A title plant meeting the requirements of NMSA 1978 Section 59A-12-13.

**B. Actual Charge.** A charge approximating the cost of the actual time, equipment, and expenses incurred.

**[B]C. Agent.** A person licensed as a title insurance agent in New Mexico. This term may also refer to the agent's company or employees.

**[C]D. Applicant.** The person, firm or organization applying for or requesting that a policy of title insurance be issued.

**[D]E. Available Funds.**

(1) For purposes of the title insurance article of the New Mexico Insurance Code only (NMSA 1978, Chapter 59A, Article 30), available funds is money deposited in a depository account with a financial institution held in the name of and subject to the control of a title insurance agent, a title insurer, or third party fiduciary for a real estate closing, that can be totally disbursed immediately by cash withdrawal or cashiers checks without relying on the balance created by other deposits in the account not made as part of the real estate closing for which disbursement is being made.

(2) It is prohibited for title insurance agents, title insurers or third party fiduciaries to guaranty the collectability of

funds or indemnify their financial institutions from loss due to uncollected funds. This prohibition shall not affect the authority of title insurers to issue closing protection letters as authorized under the rules and regulations promulgated by the superintendent of insurance; nor the ability of title insurance agents, title insurers, or third party fiduciaries to endorse without qualification, restriction or limitation, checks, drafts, or other similar items for deposit into its account at any financial institution.

(3) The following funds are "available funds" on the day of deposit:

(a) cash;

(b) received wired funds;

(c) a cashier's check or certified check which is issued payable to the title insurance agent, title insurer, or third party fiduciary and has been deposited to its account at the financial institution which issued it;

(d) a cashier's check which is payable to and was purchased by the title insurance agent, title insurer or third party fiduciary, and has been deposited to its account at a financial institution.

(4) The following funds are "available funds" on the next business day after day of deposit:

(a) treasury checks, postal money orders, federal reserve bank checks and federal home loan bank checks;

(b) state of New Mexico and local government checks which have been deposited at a financial institution located in New Mexico using a special deposit slip if required by depository institution for next day availability;

(c) cashier checks, certified checks and tellers checks which have been deposited at a financial institution using a special deposit slip if required by depository institution for next day availability.

(5) All other modes used for the transfer of monies will be made available on the earliest date they are considered "available funds" in accordance with Regulation

CC, "Availability of Funds and Collection of Checks" established by the board of governors of the federal reserve system as amended.

#### 13.14.1.22 DEFINITIONS "P":

As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings.

**A. Person.** "Person" includes individuals, corporations, associations, partnerships, trusts and estates.

**B. Policy.** A policy of title insurance promulgated by the superintendent. Policies include commitments or binders and all endorsements.

**C. Producer.** A real estate broker, qualifying broker, real estate sales person, lender, mortgage broker, mortgage company, builder, developer, attorney, architect, or any person or entity in a position to refer business to a title insurer or title insurance agent.

## NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to Section 13, and adoption of a new Section 15, in 13.14.3 NMAC, effective July 1, 2006.

#### 13.14.3.13 CHARGE TO BE MADE FOR ALL SERVICES:

**A.** No person doing the business of title insurance shall furnish or offer to furnish services, information, appraisals, subdivision ownership lists, farm packages, estimates or income production potential, pre-search or listing packages, information kits or similar packages containing information about one or more parcels of real property without making [a reasonable] an actual charge for the same.

~~[Said reasonable charge shall be collected not later than the time of delivery of these services. As used in this section, "reasonable charge" means a charge approximating the cost of the actual time, equipment and expense incurred.]~~

**B.** Title insurers and title insurance agents shall collect actual charges in the ordinary course of their business operations. Title insurers and title insurance agents shall not provide additional or new services to individuals who have failed to pay actual charges for prior services.

**13.14.3.15 MARKETING ACTIVITIES.** A title insurer or title insurance agent conducting the business of title insurance shall not:

**A.** make any monetary payment to any producer, unless the payment is for the actual cost of bona fide supplies or services received by the title insurer or agent;

**B.** make any in kind payment to any producer or provide any free products or services, including but not limited to postage, postage machines, facsimile machines, computer hardware or software, copy machines, telephones, or office space to any producer;

**C.** engage in joint advertising by any means of communication or media that names a specific producer unless the producer pays its share of the advertising cost in direct proportion to its prominence in the advertisement;

**D.** provide video equipment or any other type of electronic or cyber equipment or services, such as "virtual tours" unless the producer pays at least the actual cost for the equipment or services;

**E.** provide advertising by any means of communication or media for a producer unless the producer pays at least the actual cost for the advertisement to the title insurer or agent;

**F.** sponsor, co-sponsor, provide free door prizes, refreshments or meals at any producer's open house, tour of open houses, awards banquet, or company party unless a representative of the title insurer or agent is present and educational or marketing materials and signage are on-site for the function; at no time shall the cost of any sponsorship exceed the commensurate advertising benefit of the educational or marketing materials and signage provided;

**G.** sponsor, co-sponsor, provide free door prizes, refreshments or meals at any producer's open house unless the title insurer or agent receives commensurate advertising benefit;

**H.** provide free meals to any producer unless the title insurer or agent is present, title insurance business is discussed and the meals are not a regular

occurrence; a title insurer or agent shall not provide free recreational activities or entertainment to any producer under any circumstance;

**I.** enter into any lease or rental agreement for office space with a producer unless:

**(1)** the lease or rental agreement is for commercially reasonable terms and at least the fair market rental rate of the property; and

**(2)** the property is physically occupied by at least one bona fide full time employee of the title insurer or agent if the producer is the lessor or by one bona fide full time employee of the producer if the title insurer or agent is the lessor;

**J.** provide a career continuing education course for producers, unless each producer in attendance pays at least the actual per person cost for the course to the title insurer or agent; or

**K.** engage in any other activity otherwise prohibited by Section 59A-16-17 NMSA 1978.

## NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to Sections 11 and 20, and adoption of a new Section 28, in 13.14.8 NMAC, effective July 1, 2006.

**13.14.8.11 NON-IMPUTATION ENDORSEMENT:** The NM form 28, non-imputation endorsement, may be issued on an existing or currently issued owner's policy or loan policy insuring title to property held by a corporation, limited liability company, or partnership as an insured even when there has been no conveyance of title of such property, but there has been (1) a transfer/issuance of all or a portion of the stock of the insured corporation, (2) a transfer/substitution of all or a portion of the interests of the insured partnership, or [a substitution of all of the general partners or a sale of all of the stock of a corporate general partner] (3) a transfer/sale of all or a portion of the membership interests of the insured limited liability company. This endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of two years following the issuance of the endorsement.

**13.14.8.20 CONTIGUITY OF PARCELS ENDORSEMENTS:** [The "Contiguity of Parcels" endorsement, NM Form 54, may be attached only to Lender's Policies and Owner's Policies provided the

premium in 13.14.10.39 is paid and subject to subsections A and B. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.] Upon being furnished with a satisfactory survey and the payment of the premium provided in 13.14.10.39 NMAC, the contiguity of single parcel endorsement, NM form 54, or the contiguity of multiple parcel endorsement, NM form 66 may be attached to an owners or leasehold owners policy, a loan or leasehold loan policy, or to a construction loan policy which insures any property that is not one to four family residential, subject to Subsections A and B below.

**A.** [For Owner's Policies, the insured owner must have an interest (in fee, leasehold, or easement) in all parcels referred to in the endorsement; and] For owner's or leasehold owner's policies, the insured must already or at the time the policy is issued have an interest (in fee, leasehold, or easement) in both parcels referred to in NM form 54, or in all parcels referred to in NM form 66.

**B.** [For Loan Policies, the insured lender must have a mortgage lien that secures an interest in all parcels referred to in the endorsement] For loan, leasehold loan, or construction loan policies, the insured lender must already or at the time the policy is issued have a mortgage lien upon an interest (in fee, leasehold, or easement) in both parcels referred to in NM form 54, or in all parcels referred to in NM form 66.

**13.14.8.28 ACCESS AND ENTRY ENDORSEMENT:** The access and entry endorsement, NM form 80, may be attached to all owner's policies and loan policies, including leasehold policies and/or construction loan policies, for all properties except one to four family residential properties, provided the premium in 13.14.10.49 NMAC is paid and a satisfactory survey is furnished showing that there is vehicular and pedestrian access to the abutting existing public street, road or highway. A separate endorsement is to be issued for each public street, road or highway for which the insured wants access and entry coverage and a separate premium as provided for in 13.14.10.49 NMAC is to be paid for each endorsement issued. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

**NEW MEXICO  
PUBLIC REGULATION COMMISSION  
INSURANCE DIVISION**

This is an amendment to Section 18 of 13.14.9 NMAC, effective July 1, 2006.

**13.14.9.18 PREMIUM RATES FOR ORIGINAL OWNER’S POLICIES:** The following schedule of premium rates for original owner’s policies shall be in effect from July 1, ~~2005~~ 2006 until modified by the superintendent:

Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:
10,000	<del>[187]</del> 176	24,000	<del>[307]</del> 289	38,000	<del>[412]</del> 388
11,000	<del>[196]</del> 184	25,000	<del>[315]</del> 296	39,000	<del>[419]</del> 394
12,000	<del>[205]</del> 193	26,000	<del>[323]</del> 304	40,000	<del>[426]</del> 401
13,000	<del>[214]</del> 201	27,000	<del>[331]</del> 311	41,000	<del>[433]</del> 407
14,000	<del>[223]</del> 210	28,000	<del>[339]</del> 319	42,000	<del>[440]</del> 414
15,000	<del>[232]</del> 218	29,000	<del>[347]</del> 327	43,000	<del>[447]</del> 421
16,000	<del>[241]</del> 227	30,000	<del>[355]</del> 334	44,000	<del>[455]</del> 427
17,000	<del>[250]</del> 235	31,000	<del>[363]</del> 342	45,000	<del>[461]</del> 434
18,000	<del>[259]</del> 244	32,000	<del>[370]</del> 348	46,000	<del>[468]</del> 440
19,000	<del>[267]</del> 251	33,000	<del>[377]</del> 355	47,000	<del>[475]</del> 447
20,000	<del>[275]</del> 259	34,000	<del>[384]</del> 361	48,000	<del>[482]</del> 454
21,000	<del>[283]</del> 266	35,000	<del>[391]</del> 368	49,000	<del>[489]</del> 460
22,000	<del>[291]</del> 274	36,000	<del>[398]</del> 375	50,000	<del>[496]</del> 467
23,000	<del>[299]</del> 281	37,000	<del>[405]</del> 381		

For amounts of insurance (in thousands)	Portion of rate (per thousand) subject to agent commission, add	Agent retention percentage	Additional rate per \$1000 to be collected on policy amounts in excess of \$10 million (solely for underwriter)	Total Charged to Consumer
over \$50 to \$100	\$ <del>[6.04]</del> 5.68	78-80%		\$ <del>[6.04]</del> 5.68
over \$100 to \$500	\$ <del>[4.75]</del> 4.47	78-80%		\$ <del>[4.75]</del> 4.47
over \$500 to \$2,000	\$ <del>[3.73]</del> 3.51	78-80%		\$ <del>[3.73]</del> 3.51
over \$2,000 to \$5,000	\$ <del>[3.00]</del> 2.82	75%		\$ <del>[3.00]</del> 2.82
over \$5,000 to \$10,000	\$ <del>[2.49]</del> 2.34	70%		\$ <del>[2.49]</del> 2.34
Over \$10,000 to \$25,000	\$ <del>[2.14]</del> 2.01	65%	\$ 0.25	\$ <del>[2.39]</del> 2.26
over \$25,000 to \$50,000	\$ <del>[1.86]</del> 1.75	60%	\$ 0.25	\$ <del>[2.11]</del> 2.00
over \$50,000	\$ <del>[1.49]</del> 1.40	50%	\$ 0.25	\$ <del>[1.74]</del> 1.65

**NEW MEXICO  
PUBLIC REGULATION  
COMMISSION  
INSURANCE DIVISION**

This is an amendment to Sections 13 and 39, and adoption of a new Section 49, in 13.14.10 NMAC, effective July 1, 2006.

**13.14.10.13 MANUFACTURED HOUSING ENDORSEMENT:** When a manufactured housing endorsement, NM form 16, is issued the premium for each

endorsement shall be ~~[fifty dollars (\$50.00)]~~ seventy-five dollars (\$75.00) in addition to the premium charged for the policy whether the endorsement is attached at issuance of the policy or thereafter.

**13.14.10.39 CONTIGUITY OF PARCELS ENDORSEMENTS:** When a contiguity of single parcel endorsement, NM Form 54, or a contiguity of multiple parcels endorsement, NM form 66, is issued pursuant to 13.14.8.20, the premium for each endorsement shall be one hundred dollars (\$100.00) in addition to the premium

charged for the policy.

**13.14.10.49 ACCESS AND ENTRY ENDORSEMENT:** When an access and entry endorsement, NM form 67, is issued pursuant to 13.14.8.28 NMAC, the premium for the endorsement for each street, road, or highway shall be twenty-five dollars (\$25.00).

**NEW MEXICO PUBLIC REGULATION  
COMMISSION  
INSURANCE DIVISION**

This is an amendment to Sections 13, 48 and 67, and adoption of new Sections 79 and 80, in 13.14.18 NMAC, effective July 1, 2006.

**13.14.18.13 APPROVED FORMS:** The following are the only title insurance forms promulgated for use in New Mexico:

NM FORM NO.	ALTA FORM NO. & DATE	NAME OF FORM	NMAC NO.
1	10-17-92	Owner's Policy	13.14.18.14
2	10-17-92	Loan Policy	13.14.18.15
3	10-17-92	Construction Loan Policy	13.14.18.16
6		Commitment for Title Insurance	13.14.18.19
7	1963	U.S. Policy	13.14.18.20
8	3-27-87	Closing Protection Letter	13.14.18.21
9		Notice of Availability of Owner's Title Insurance	13.14.18.22
10	9-24-94	Facultative Reinsurance Agreement	13.14.18.23
11		Multipurpose Endorsement	13.14.18.24
12	4, Rev. 6-1-87	Condominium Endorsement	13.14.18.25
13	5, Rev. 6-1-87	P.U.D. Endorsement	13.14.18.26
14	6, Rev. 6-1-87	V.R.M. Endorsement	13.14.18.27
15	6.2, Rev. 6-1-87	V.R.M. Endorsement, Negative Amortization	13.14.18.28
16	7, Rev. 6-1-87	Manufactured Housing Unit Endorsement	13.14.18.29
17		Revolving Credit Endorsement	13.14.18.30
18	A, Rev. 6-1-87	Construction Loan Policy Endorsement A	13.14.18.31
19	D, Rev. 6-1-87	Construction Loan Policy Endorsement D	13.14.18.32
20		Leasehold Owner's Endorsement	13.14.18.33
21		Leasehold Loan Policy Endorsement	13.14.18.34
22		Pending Disbursement Down Date Endorsement	13.14.18.35
23		Pending Improvements Endorsement	13.14.18.36
24		Assignment of Mortgage Endorsement	13.14.18.37
25		Additional Advance Endorsement	13.14.18.38
26		Partial Coverage Endorsement	13.14.18.39
27	1963	ALTA US Policy Down Date Endorsement	13.14.18.40
28		Non-Imputation Endorsement	13.14.18.41
29	8.1, Rev. 3-27-87	Environmental Protection Lien Endorsement	13.14.18.42
30		Condominium Endorsement to Owner's Policy	13.14.18.43
31		Owner's Leasehold Conversion Endorsement	13.14.18.44
32		Coordinate and Proportionate Endorsement	13.14.18.45
33		Change of Name Endorsement	13.14.18.46
34	1991	U.S. Policy	13.14.18.47
35		Notice to Proposed Insured	13.14.18.48
41		Foreclosure Guarantee Policy	13.14.18.54
42		Foreclosure Guarantee Policy Down Date Endorsement	13.14.18.55
43		Insuring Around Endorsement	13.14.18.56
44		Revolving Credit, Increased Credit Limit Endorsement	13.14.18.57
45	10-19-96	Residential Limited Coverage Junior Loan Policy	13.14.18.58
46	10-19-96	Down Date Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.18.59
47	10-19-96	Revolving Credit/Variable Rate Endorsement to Residential Limited Coverage Junior Loan Policy	13.14.18.60
48	Form 2	Truth-in-Lending Endorsement	13.14.18.61
49		Notice of Availability of Future Increase in Coverage	13.14.18.62
50	Form 9	Restrictions, Encroachments, & Minerals Endorsement	13.14.18.63
51		Land Abuts Street Endorsement	13.14.18.64
52		Designation of Improvement, Street Endorsement	13.14.18.65
53		Same as Survey Endorsement	13.14.18.66
54	<u>ALTA 19.1</u>	Contiguity of <u>Single Parcel[s]</u> Endorsement	13.14.18.67
55		Named Insured Endorsement	13.14.18.68
56	Form 9.1	Restrictions, Encroachments, & Minerals Endorsement -Unimproved Land	13.14.18.69

57	Form 9.2	Restrictions, Encroachments, & Minerals Endorsement -Improved Land	13.14.18.70
58		First Loss Endorsement	13.14.18.71
59		Last Dollar Endorsement	13.14.18.72
60	Form 12	Loan Policy Aggregation Endorsement	13.14.18.73
61		Foundation Endorsement	13.14.18.74
62		Assignment of Rents/Leases Endorsement	13.14.18.75
63	ALTA 2000	Short Form Residential Loan Policy	13.14.18.76
64	ALTA 3.0, Rev. 10 -17-98	Zoning Endorsement, Unimproved Land	13.14.18.77
65	ALTA 3.1, Rev. 10 -17-98	Zoning Endorsement, Completed Structure	13.14.18.78
66	ALTA 19	Contiguity of Multiple Parcels Endorsement	13.14.18.79
67	ALTA 17	Access and Entry Endorsement	13.14.18.80

**13.14.18.48 NM FORM 35: NOTICE TO PROPOSED INSURED:**

**NOTICE TO PROPOSED INSURED**

[NM Form 35]

Name of Purchaser(s): \_\_\_\_\_  
 Commitment No.: \_\_\_\_\_ Commitment issue date: \_\_\_\_\_  
 Short Description of Property: \_\_\_\_\_

Name and Telephone Number of Agency/Insurer ("Company"): \_\_\_\_\_

**READ THIS NOTICE TO FAMILIARIZE YOURSELF WITH ADDITIONAL COVERAGES AVAILABLE**

The New Mexico Insurance Department requires that this Notice be given in connection with all commitments/binders issued for title insurance owner's policies on one to four residential family properties.

THIS NOTICE SHOULD BE RETURNED TO THE COMPANY AT THE EARLIEST POSSIBLE TIME. IT MUST BE SIGNED NOT LATER THAN CLOSING. FAILURE TO ACT IMMEDIATELY COULD DELAY CLOSING SINCE NO TITLE POLICY CAN BE ISSUED UNTIL THIS DOCUMENT IS SIGNED AND RETURNED TO THE COMPANY.

Standard title insurance policies do not cover certain risks. These risks include the standard exceptions shown on your commitment/binder schedule "B", which will also be part of your policy. Standard Exceptions 1, 2, 3, 4, 5, 6 and 7 (like all the exceptions) limit the coverage under your title policy. However, some of this coverage can be reinstated as described below.

Standard Exception 1 (Parties in Possession) excludes coverage for certain claims of tenants, squatters or other persons who may claim possession of the property. Standard Exception 1 may be deleted and the coverage reinstated if you meet certain requirements. There is no extra premium charge for this coverage, but there may be a charge for inspection of the property.

Do you want this coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

Standard Exception 2 (Unrecorded Easements) excludes coverage for easements not shown in the public records. Standard Exception 2 may be deleted and the coverage reinstated if you meet certain requirements. There is no extra premium charge for this coverage, but a survey meeting the insurer's requirements is required and there may be a charge for an inspection.

Do you want this coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

Standard Exception 3 (Survey Protection) excludes coverage for any problem that an accurate survey would show. Without this coverage, your policy won't insure the accuracy of your survey. If your survey turns out to have inaccurately represented items such as boundaries, easements, location of improvements, etc., the standard policy won't cover any harm you suffer as a result of such inaccuracies. Standard Exception 3 may be deleted and the coverage reinstated if you meet certain requirements. The charge for this coverage is 15% of the [Owner's Policy premium] full basic rate, and you must provide a survey meeting the insurer's requirements for insurability.

Do you want this coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

Standard Exception 4 (Lien Coverage) excludes coverage for certain liens (i.e. claims filed for payment for services and materials provided in connection with the property) not filed in the public records on the policy date. Standard Exception 4 may be deleted and the coverage reinstated if you satisfy certain requirements. The charge for this coverage is \$25 if the statutory time limit for filing a lien has expired. If the time limit has not expired, the charge is \$3.00 for each \$1,000 of insurance. In either case, you will have to provide information that the company requires, and the Buyer or Seller will be responsible for any cost of providing such information.

Do you want this coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

Standard Exception 6 (Any title to lands comprising the shores or bottoms of navigable streams, lakes, etc.) except coverage for title to land that is beneath navigable waters if there are any on the land you are acquiring. Standard Exception 6 may be deleted and the coverage reinstated if the title company is provided a satisfactory survey and upon review of the survey the deletion is authorized by the title insurance underwriter. The charge for this coverage is \$25.

Do you want this coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

Standard Exception 7 (Unpatented mining claims; water rights, claims or title to water Coverage) excepts coverage for unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water. All of Standard Exception 7 may be deleted except "Water rights, claims or title to water" if the property is subject to such coverage, and certain underwriter requirements are met. The charge for this coverage is \$25.

Do you want this coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

Standard Exception 8 (Taxes or assessments which are not shown as existing liens by the public records) excepts coverage for taxes or assessments which are not shown as existing liens by the public records. All of Standard Exception 8 may be deleted upon request, upon being paid the premium provided for in 13.14.10.46 NMAC, and upon being furnished with a satisfactory search of the appropriate records, if any. The charge for this coverage is \$25.

Do you want this coverage? Yes \_\_\_\_\_ No \_\_\_\_\_

PLEASE ACKNOWLEDGE YOU HAVE BEEN MADE AWARE THAT YOU MAY INCREASE YOUR TITLE POLICY AMOUNT IF YOU ADD IMPROVEMENTS, OR IF THE VALUE OF YOUR PROPERTY INCREASES OVER TIME, BY REQUESTING AN INCREASE IN COVERAGE AND PAYING THE APPLICABLE PREMIUMS. THIS WILL NOT CHANGE THE TERMS OF THE POLICY OTHER THAN THE AMOUNT.

\_\_\_\_\_ initial here

Upon the Company's receipt of this signed Notice, it may require that certain information and documents be produced. For example, a survey, inspection, lien waivers, affidavits, financial statements, etc. may be requested. The information requested will vary depending upon what additional coverage you have requested, the insurer's guidelines for issuing such coverage and the particular transaction involved. Providing this information and examining it may extend the length of time needed to close and to prepare your title policy. TO AVOID DELAYS YOU ARE REQUESTED TO FILL OUT, SIGN AND RETURN THIS NOTICE TO THE COMPANY AS SOON AS POSSIBLE, ESPECIALLY IF YOU WANT ANY OF THE ADDITIONAL COVERAGES.

If you need further information concerning cost or requirements for obtaining the coverages only, you should call the Company at the telephone number given at the beginning of this Notice. IF YOU DO NOT UNDERSTAND THE ADDITIONAL COVERAGES, OR WANT TO KNOW IF YOU NEED THESE COVERAGES, YOU ARE ENCOURAGED TO SEEK AN ATTORNEY'S ADVICE. THE CLOSING OFFICER AND THE COMPANY'S PERSONNEL ARE NOT REQUIRED AND MAY NOT BE QUALIFIED TO ANSWER SUCH QUESTIONS.

Purchaser(s) \_\_\_\_\_ Date \_\_\_\_\_

13.14.18.67 NM FORM 54: CONTIGUITY OF SINGLE PARCEL[S] ENDORSEMENT:

Contiguity of Single Parcel[s] Endorsement

Attached to Policy No. \_\_\_\_\_

Issued By

Blank Title Insurance Company

[NM Form 54; ALTA Form 19.1]

~~[The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land described in Schedule \_\_\_\_\_ to be contiguous to (describe the land contiguous to subject land by legal description or by reference to a recorded instrument):~~

~~This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.]~~

The Company hereby insures against loss or damage sustained by the insured by reason of:

(1) the failure of the land to be contiguous along its \_\_\_\_\_ boundary line to [describe the land that is contiguous to the "land" as defined in the policy by its legal description or by reference to a recorded instrument -e.g. "...that certain parcel of real property legally described in the deed recorded as Instrument No. \_\_\_\_\_, records of \_\_\_\_\_ County, State of New Mexico]; or

(2) the presence of any gaps, strips or gores separating the contiguous boundary line described above.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the date of policy, or (iv) increase the amount of insurance. To the extent a provi-

sion of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: \_\_\_\_\_

BLANK TITLE INSURANCE COMPANY

BY \_\_\_\_\_

**13.14.18.79 NM FORM 66: CONTIGUITY OF MULTIPLE PARCELS ENDORSEMENT:**

Contiguity of Multiple Parcels Endorsement

Attached to Policy No.

Issued By

Blank Title Insurance Company

[NM Form 66; ALTA Form 19]

The Company hereby insures against loss or damage sustained by the insured by reason of:

\_\_\_\_ (1) the failure [of the \_\_\_\_\_ boundary line of Parcel A] of the land to be contiguous to [the \_\_\_\_\_ boundary line of Parcel B] for more than two parcels, continue as follows: ;”of [the \_\_\_\_\_ boundary line of Parcel B] of the land to be contiguous to [the \_\_\_\_\_ boundary line of Parcel C] and so on until all contiguous parcels described in the policy have been accounted for]; or

\_\_\_\_ (2) the presence of any gaps, strips or gores separating the contiguous boundary lines described above.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the date of policy, or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: \_\_\_\_\_

BLANK TITLE INSURANCE COMPANY

BY \_\_\_\_\_

**13.14.18.80 NM FORM 67: ACCESS AND ENTRY ENDORSEMENT:**

Access and Entry Endorsement

Attached to Policy No.

Issued By

Blank title Insurance Company

[NM Form 67; ALTA Form 17]

The Company hereby insures against loss or damage sustained by the insured if, at date of policy: (i) the land does not abut and have both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the “street”), (ii) the street is not physically open and publicly maintained, or (iii) the insured has no right to use existing curb cuts or entries along that portion of the street abutting the land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the date of policy, or (iv) increase the amount of insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: \_\_\_\_\_

BLANK TITLE INSURANCE COMPANY

BY \_\_\_\_\_



**NEW MEXICO  
SECRETARY OF STATE**

1.10.22 NMAC, Provisional Voting Security, filed 8-1-2003 is repealed and replaced by 1.10.22 NMAC, Provisional Voting, Recounting and Security, effective 4-28-2006.

**NEW MEXICO  
SECRETARY OF STATE**

**TITLE 1            GENERAL    GOV-  
ERNMENT ADMINISTRATION  
CHAPTER 10    ELECTIONS    AND  
ELECTED OFFICIALS  
PART 22            PROVISIONAL  
VOTING, RECOUNTING AND SECUR-  
ITY**

**1.10.22.1            ISSUING AGENCY:**  
Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico, 87503.  
[1.10.22.1 NMAC - Rp, 1.10.22.1 NMAC, 4-28-06]

**1.10.22.2            SCOPE:** This rule applies to any special statewide election, general election, primary election, county-wide election or elections to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).  
[1.10.22.2 NMAC - Rp, 1.10.22.2 NMAC, 4-28-06]

**1.10.22.3            STATUTORY  
AUTHORITY:** Election Code, Section 1-2-1 NMSA 1978; Chapter 356, Laws 2003, Public Law 107-252, The Help America Vote Act of 2002; Chapter 270, Laws 2005. The issuing authority shall issue rules to ensure securing the secrecy of the provisional ballot and protect against fraud in the voting process, create a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted, ensure the secrecy of provisional ballots, especially during canvassing, reviewing or recounting and govern and allow procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in the case of a contest, recount, or recheck of election results.  
[1.10.22.3 NMAC - Rp, 1.10.22.3 NMAC, 4-28-06]

**1.10.22.4            DURATION:**  
Permanent.  
[1.10.22.4 NMAC - Rp, 1.10.22.4 NMAC, 4-28-06]

**1.10.22.5            EFFECTIVE DATE:**  
April 28, 2006 unless a later date is cited at the end of a section.  
[1.10.22.5 NMAC - Rp, 1.10.22.5 NMAC, 4-28-06]

**1.10.22.6            OBJECTIVE:** The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003. The purpose of the amendment is compliance with the provisions of PL 107-252, effective October 29, 2002, which allows a voter whose name does not appear on the roster at the polling place or a new voter whose name does not appear on the roster and has not provided the required identification to cast a provisional ballot. The purpose of this rule is to ensure the secrecy of the provisional ballot and protect against fraud in the voting process. Chapter 270, Laws 2005 amended the Election Code to require a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted, to ensure the secrecy of provisional ballots, especially during canvassing, reviewing or recounting and to govern and allow procedures for reviewing the qualification of provisional ballot envelopes, absentee and other paper ballots in the care of a contest, recount, or recheck of election results.

[1.10.22.6 NMAC - Rp, 1.10.22.6 NMAC, 4-28-06]

**1.10.22.7            DEFINITIONS:**  
**A.            "Abbreviated address"** means a voter using initials to designate a city within New Mexico and includes, but is not limited to, "LC" for Las Cruces, "SF" for Santa Fe, or "ABQ" for Albuquerque.

**B.            "Abbreviated name"** means shortened given or surname including, but not limited to, 'Pat' for Patrick, Patricio, or Patricia, 'Wm' or 'Bill' for William, 'Rick' for Ricardo or Richard, 'Mtz' for Martinez.

**C.            "Absentee ballot"** means a paper ballot card cast by a voter other than at an alternate location or regular polling place on election day.

**D.            "Absentee ballot registrar"** means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant's precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter and the date and time of receipt of the ballot.

**E.            "Absentee precinct board"** means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.

**F.            "Absentee provisional ballot"** means the paper ballot card issued to an absent provisional voter.

**G.            "Alternate location"** means a site outside the office of the county clerk, established by the county clerk, where a voter may cast a ballot seventeen (17) days prior to an election and includes mobile alternate voting locations.

**H.            "Alternative voter"** means a voter, who, after the deadline for requesting an absentee ballot and due to unforeseen illness or disability, resulting in confinement to a hospital, sanatorium, nursing home or residence, is unable to vote at his precinct polling place.

**I.            "Ballot"** means a paper ballot card that is used on an optical scan vote tabulating machine or hand tallied or the electronic image on a direct recording electronic voting system that presents a sequence of contests, ballot measures or both.

**J.            "Challenger"** means a voter in that county to which he is appointed under the provisions of the Election Code.

**K.            "Contest"** means court litigation that seeks to overturn the outcome of an election pursuant to Section 1-14-1 NMSA 1978.

**L.            "County canvassing board"** means the board of county commissioners in each county.

**M.            "Designated polling place"** means the voting location assigned to a voter based on that voter's residence within a precinct of the county.

**N.            "Direct recording electronic (DRE) voting system"** means a voting system that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program, and that records voting data and cast vote records by in internal and external memory components. It produces a tabulation of the voting data stored in a removable memory component and/or in printed copy.

**O.            "Early voter"** means a voter who votes in person before election day and not by mail.

**P.            "Election"** means any special statewide election, general election, primary election or special election to fill vacancies in the office of United States representative and regular or special school district elections.

**Q.            "Electronic vote tabulating (EVT) marksense voting system" or "optical scan vote tabulating system"** means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot card imprinted on either or both faces with text and voting response locations. The marksense or



optical scan vote tabulating voting system records votes by means of marks made in the voting response locations.

**R. "Emergency paper ballot"** means the paper ballot card used in a polling place on election day when a voting system is disabled, cannot be repaired in a reasonable length of time and when no other voting system is available to the voter.

**S. "Federal ballot"** means a paper ballot card that contains only federal candidates or questions.

**T. "High speed central count marksense ballot tabulator"** means a self-contained optical scan ballot tabulator that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

**U. "Marksense or optical scan ballot"** means a paper ballot card used on an electronic vote tabulating marksense vote tabulating system, optical scan vote tabulating system or high-speed central count marksense vote tabulator.

**V. "In-lieu of absentee ballot"** means a paper ballot card provided to a voter at his polling place when the absentee ballot was not received by the voter before election day.

**W. "Naked ballot"** means an absentee ballot, provisional ballot, alternate ballot, replacement absentee ballot or in-lieu of absentee ballot that has not been placed in the inner secrecy envelope by the voter.

**X. "Observer"** means a voter of a county who has been appointed by a candidate, political party chair or election related organization pursuant to the provisions of the Election Code.

**Y. "Overvoted ballot"** means a paper ballot card on which the voter has selected more than the number of alternatives allowed in a contest or on a question.

**Z. "Precinct board"** means the appointed election officials at a polling place, consolidated polling place, absentee precinct or alternate location.

**AA. "Presidential ballot"** means a paper ballot card containing only names of candidates for United States president.

**BB. "Provisional absentee voter"** means a voter who votes on a provisional absentee ballot after initially attempting to vote by absentee ballot but whose name does not appear on the roster or has failed to meet the voter identification requirements, pursuant to the provisions of the Election Code.

**CC. "Provisional ballot"** means a marksense or optical scan paper

ballot card that is marked by a provisional voter.

**DD. "Provisional ballot tally sheet"** means a document prepared and used by the county clerk for the counting of votes cast by qualified provisional voters for candidates and questions.

**EE. "Provisional ballot transmission envelope"** means a sealed envelope or pouch marked and designated by the county clerk to transmit provisional ballots from the polling place or alternate location to the office of the county clerk.

**FF. "Provisional voter"** means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

**GG. "Recheck"** means a verification procedure where a printout of the electronic record of votes cast in an election is made from each electronic memory device in the electronic voting system and the results are compared with the results shown on the official returns pursuant to Section 1-1-6 NMSA 1978.

**HH. "Recount"** means a verification procedure whereby the voter's selections on a paper ballot card may be counted by hand and the results compared with the results shown on the official returns pursuant to Section 1-1-6 NMSA 1978.

**II. "Replacement absentee ballot"** means a paper ballot card issued by the county clerk prior to 5:00 p.m. on the Monday immediately preceding the date of the election to a voter who has applied for but not received an absentee ballot.

**JJ. "Signature roster"** means the certified list of voters at a polling place which is signed by a voter when presenting himself on election day.

**KK. "Tally sheet"** means a document prepared by the county clerk and used for the counting of provisional ballots, hand tallied absentee ballots, in-lieu of absentee ballots and emergency paper ballots.

**LL. "Verification process"** means the reviewing process used by a county clerk to determine the eligibility of a provisional or in-lieu of absentee voter.

**MM. "Voter"** means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.

**NN. "Voting response area"** means the place on a paper ballot card where the voter is instructed to mark his preference for a candidate or question.

[1.10.22.7 NMAC - Rp, 1.10.22.7 NMAC, 4-28-06]

## 1.10.22.8 PRECINCT BOARD PROCEDURES:

**A.** A voter whose name does not appear on the roster or is required to present identification at the polling place and fails to do so shall be entitled to cast a vote on a provisional ballot. The precinct board shall instruct the voter that the required identification must be taken to the office of the county clerk before the county canvass begins for the vote to be qualified. The precinct judge shall give the voter written instructions on how the voter may determine whether the vote was counted and, if the vote was not counted, the reason it was not counted. The precinct board shall ensure that each provisional voter is provided with a toll free telephone number that may be called fourteen (14) days after the election for a determination on whether the provisional ballot was counted.

**B.** Each polling place shall post the phone numbers of the county clerk and the secretary of state and a map of the precincts represented in that polling place and an alphabetical list of the voters in each precinct in that polling place. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote as a regular voter whose name is not on the roster. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote as a regular voter who is required to provide identification pursuant to the Election Code. The precinct board shall also ensure that the provisional voter, absentee provisional ballot or in-lieu of absentee voter shall fill out all required information on the provisional ballot affidavit or in-lieu of absentee ballot affidavit and place the ballot in the inner secrecy envelope and outer envelope prescribed by the secretary of state. The precinct board shall ensure that the name of a provisional voter, absentee provisional ballot or in-lieu of absentee ballot voter is entered in the roster on the line immediately following the last entered voter's name, pursuant to the Election Code.

**C.** The precinct board shall ensure that each provisional voter completes the certificate of voter registration attached to the provisional ballot outer envelope and that the certificate of registration is not placed in the envelope but returned to the county clerk.

**D.** The precinct board shall ensure that each provisional ballot, absentee provisional ballot or in-lieu of absentee ballot cast at a polling place or alternate site is placed in an inner or secrecy envelope prior to placing the inner or secrecy envelope in the outer envelope containing the voter's oath or affirmation.

**E.** The precinct board shall ensure emergency paper ballots shall

be handled and tallied pursuant to the provisions of the Election Code.

**F.** The precinct board shall ensure provisional voters are not subject to challenge at the time of voting under the procedures provided in the Election Code.

**G.** The precinct board shall ensure the voter registration card attached to the outer provisional ballot envelope shall be placed in the provisional ballot transmission envelope and returned to the county clerk.

**H.** The precinct board shall ensure a provisional ballot, absentee provisional ballot, or in-lieu of absentee ballot shall not be placed in a ballot box at the polling place, alternate location or county clerk's office. Provisional ballots shall be deposited in a special sealed provisional ballot transmission envelope or pouch designated by the county clerk for that purpose. The precinct board shall not open any absentee ballots delivered to the precinct but shall deliver the unopened official mailing envelopes to the absentee precinct boards.

**I.** Absentee precinct boards are governed by 1.10.12.1 NMAC. Absentee precinct boards shall not open or tally any provisional absentee ballots, but shall convey them to the county clerk for processing according to the provisions of the Election Code and 1.10.22 NMAC. Identification documents submitted with provisional absentee ballots shall be attached to the voter's certificate of registration and a notation that the documents have been submitted shall be entered into the electronic file of registered voters. [1.10.22.8 NMAC - Rp, 1.10.22.8 NMAC, 4-28-06]

### **1.10.22.9 COUNTY CLERK PROCEDURES:**

**A.** The provisional ballot outer envelope containing the voter's oath shall not be opened until the county clerk has determined the reason the provisional voter's name was not on the signature roster, or whether the voter has provided identification, if required, by the Election Code. The county clerk shall place any naked ballot in an individual manila envelope to replace the inner secrecy envelope and mark the voter's correct voting precinct on that envelope.

**B.** The county clerk has the authority to determine the qualification of a provisional ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional ballot, absentee provisional ballot or in-lieu of absentee ballot because the voter's address on the affidavit does not match the voter's address on the voter's certificate of registration, provided the county clerk can identify the voter

with other information provided on the affidavit.

**C.** The county clerk shall determine the qualification of a provisional ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional ballot, absentee provisional ballot or in-lieu of absentee ballot because the voter has used an abbreviated name, address, middle name, middle initial or suffix, provided the county clerk can identify the voter with other information provided on the affidavit.

**D.** The county clerk shall determine the qualification of a provisional ballot but shall not disqualify any provisional ballot because the voter did not sign both the affidavit and the polling place roster if the voter provided a valid signature and the county clerk can identify the voter with information provided on the outer envelope of the paper ballot or affidavit.

**E.** A provisional ballot shall be qualified if both:

(1) the voter has provided all the information under Section 1-12-25.3 and Section 1-12-25.4 NMSA 1978, provided that a voter shall not have his vote disqualified under Subsections B, C or D of this section, and

(2) if the county clerk can determine the voter is a registered voter in the county; if a voter is registered in county, but cast a provisional ballot at the wrong polling place, the county clerk shall ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted; if there is a conflict between New Mexico statute and this statewide standard, the statute will control.

**F.** A provisional ballot shall be rejected if: (a) the voter has not provided all the information under Sections 1-12-25.3 and 1-12-25.4 NMSA 1978 subject to the provision in Subsections B, C or D of this section; (b) the clerk cannot determine the voter is a registered voter in the county; (c) the voter has voted outside his county of registration; (d) voter has voted an absentee ballot in the election; (e) voter's registration was properly cancelled; or

(f) voter failed to meet the voter identification requirements. If there is a conflict between New Mexico statute and this statewide standard, the statute will control.

**G.** A county canvass observer, pursuant to Section 1-2-31 NMSA 1978 may be present during the provisional ballot qualification process and canvass. At all times while observing the process and canvass, the observer shall wear self-made badges designating them as authorized observers of the organizations which they represent. They shall not wear any other form of identification, party or candidate pins. The observer shall not: (a) perform any duty of the workers; (b) handle any

material; (c) interfere with the orderly conduct of workers conducting the process; and (d) use cell phones, audio or video tape equipment while observing the process. The provisional ballot qualification process shall be run with the county clerk staff member reading aloud the name and address of the provisional ballot. A county canvass observer may interpose a challenge to the qualification of the voter consistent with Subsections A - E of Section 1-12-20 NMSA 1978. The county clerk staff member shall handle the challenge consistent with Section 1-12-22 NMSA 1978. The county clerk staff member will then announce aloud his or her decision regarding whether that provisional vote will or will not be qualified; the county clerk shall assign a different county clerk staff member than those involved in the qualification process to receive and open the ballot from outer envelope for the tallying process. The observer may preserve for future reference written memorandum of any action and may raise it at the canvass meeting. Observers shall not be in the line of sight or view or make notes of the voter's personal information: date of birth, party affiliation, and social security number.

**H.** The determination of the provisional voter's status and whether the ballot shall be counted, along with the research done by the county clerk shall be noted on the provisional ballot outer envelope. The county clerk shall, after status determination, separate qualified ballots from unqualified ballots. Unqualified ballots shall not be opened and shall be deposited in an envelope marked "unqualified provisional ballots" and retained for twenty-two (22) months, pursuant to 42 USC 1974. The outer provisional ballot envelope for qualified provisional ballots shall be opened and deposited in an envelope marked "qualified provisional ballot outer envelopes" and retained for twenty-two (22) months, pursuant to 42 USC 1974. The county clerk shall mark the number of the voter's correct precinct on the inner secrecy envelope and ballot for the purposes of a recount or contest, but no other information indicating the identity of the voter shall be furnished to the county canvassing board or any other person. After the tally of qualified provisional ballots, the county clerk shall deposit the counted provisional ballots in an envelope marked "counted provisional ballots" and retained for twenty-two (22) months, pursuant to 42 USC 1972.

**I.** The county canvassing board shall direct the county clerk to prepare a tally of qualified provisional ballots, in-lieu of absentee ballots and absentee provisional ballots and include them in the canvass presented to the county canvassing board. Provisional ballots, in-lieu of absentee ballots and absentee provisional ballots

shall be tallied on separate tally sheets. The county clerk shall process provisional absentee ballots using the same procedures used for provisional ballots cast at the polling place or alternate location. The tally sheet may be a photocopy of a precinct tally sheet, however it shall be clearly marked as designated for provisional ballots, in-lieu of absentee ballots or provisional absentee ballots. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional ballot tally to the office of the secretary of state. The county clerk shall also prepare a report, on behalf of the county canvassing board, on the disposition of all provisional ballots cast within the county. The report shall contain the name, address, date of birth and social security number of each provisional voter, in-lieu of absentee ballot voter or provisional absentee ballot voter. The report shall be transmitted to the secretary of state within 10 days of the election. Pursuant to the Help America Vote Act, information about access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot. The report shall include an explanation why a provisional voter's name was not included on the signature roster and the reason why any provisional voter's ballot, in-lieu of absentee voter's ballot or provisional absentee voter's ballot was not counted. The report shall be in alphabetical order and shall include the social security number and date of birth for each voter.

**J.** The county clerk shall establish a free access system, such as a toll-free telephone number or internet web site, that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted, and, if the vote was not counted, the reason it was not counted. Access to this system is restricted to the voter who cast the ballot.

**K.** The county clerk may designate emergency paper ballots for use as provisional ballots.

**L.** The county clerk shall notify by certified mail each voter whose provisional ballots was not counted of the reason the ballot was not counted. The clerk shall send out this notification any time between the closing of the polls on election day through the tenth calendar day following the election. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal this decision to the county clerk.

**M.** The appeal process pursuant to Subsection C of Section 1-12-25.2 NMSA 1978 shall be conducted as follows:

(1) the county clerk shall select a hearing officer(s) from staff or a person from the community who is not affiliated with any candidate on the ballot and knowl-

edgeable of election law and the clerk shall provide a disability accessible room for the hearing officer to work;

(2) the voter shall schedule an appointment time for an appeal by calling the county clerk's office and shall appear under oath and show by a preponderance of the evidence that the vote should be counted;

(3) the voter may appear with counsel;

(4) the appeal hearing shall be an open meeting, but the voter's personal information:

- (a) date of birth;
- (b) party affiliation, and
- (c) social security number shall

not be stated out loud and the public shall not be in the line of sight or view or make notes of the voter's personal information;

(5) county clerk staff and the public may make brief public comment and offer relevant exhibits but only the hearing officer shall be permitted to cross examine the witness;

(6) the hearing officer shall not be bound by the rules of civil procedure, but may use them for guidance and shall make an immediate oral decision or send by certified mail a letter decision to the voter;

(7) there is no statutory right of appeal;

(8) all decisions shall cite a provision of the Election Code explaining the disposition and be announced or mailed by the Monday before the state canvassing board meeting;

(9) if the voter prevails, the hearing officer shall direct the county clerk staff to handle the ballot as a qualified provisional ballot as found above; and

(10) the county clerk shall notify the county canvassing board of the completion and results of the appeals process.

[1.10.22.9 NMAC - Rp, 1.10.22.9 NMAC, 4-28-06]

**1.10.22.10 SECRETARY OF STATE PROCEDURES:**

**A.** Provisional voters wishing to determine the disposition of their ballot may call the office of the secretary of state fourteen (14) days after the election. The secretary of state shall make the agency toll free number available to county clerks for the purpose of determining the status of provisional ballots. The secretary of state, prior to providing information to a voter on the disposition of his ballot, shall verify the identity of the voter by name, address, date of birth and social security number.

**B.** The secretary of state shall not discuss the disposition of any provisional ballot with any person other than the provisional voter.

[1.10.22.10 NMAC - Rp, 1.10.22.10

NMAC, 4-28-06]

**1.10.22.11 RECOUNT PROCEDURES FOR STATE CANVASSING BOARD:**

**A.** A recount shall be conducted pursuant to the provisions of the Election Code.

**B.** If an application is received and payment is made pursuant to law, the county clerk shall coordinate with district judge and the secretary of state on recount date.

**C.** The county clerk shall receive summons from the secretary of state pursuant to Subsection A of Section 1-14-16 NMSA 1978.

**D.** Precinct board shall be responsible for recounting all paper ballots. The county clerk shall provide tally sheets for the purpose of the recount.

**E.** The county clerk deliver summons "recount workers", including absentee precinct board members (for absentee and in-lieu ballots), early absentee precinct board (for early absentee ballots—if board is different from absentee precinct board, county clerk (for qualified provisional and rejected provisional ballots), and any precinct board members whose precincts used paper ballots.

**F.** The county clerk must send notice to district judge and county chairman of each political party pursuant to Subsection B of Section 1-14-16 NMSA 1978.

**G.** The election workers must meet at county courthouse at 10 a.m. on designated date pursuant to Subsection C of Section 1-14-16 NMSA 1978.

**H.** The county clerk must arrange for transportation of ballots to recount site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the county courthouse.

**I.** At the site of the courthouse, the district court judge will verbally order the boxes to be opened. The district court judge will instruct the recount workers on what constitutes the statewide standard on a vote as stated in Section 1-9-4.2 NMSA 1978 and Subsection C of 1.10.12.5 NMAC. The district court judge will instruct the recount workers on what constitutes the statewide standard on qualified provisional ballot pursuant to 1.10.22.9 NMAC.

**J.** The process is open to public observers, but not to public comment.

**K.** Once the boxes are opened, presiding judge of the relevant precinct board shall locate the ballots that have the ballot combination for that precinct.

**L.** The district court judge will order the ballots to be fed into the tabulator.

**M.** Any rejected ballots rejected by the tabulator should be hand-tallied by the precinct board.

**N.** The county clerk shall re-tally all qualified provisional ballots and review all rejected provisional ballots.

**O.** No rejected ballot shall be disqualified solely because the signature on the outer envelope or affidavit contains an abbreviated name, lack of a middle initial, or lack of suffix, provided that the voter can be identified with information provided on the outer envelope or voter's affidavit.

**P.** The results of the recount shall be compared to the results of the county canvass.

**Q.** In any recount procedure, the court may order comparison of audit tapes and tabulator voting system.

**R.** After completion of recount, the precinct boards and clerks shall replace the paper ballots in the ballot boxes and lock them pursuant to Subsection E of Section 1-14-16 NMSA 1978.

**S.** The precinct board shall execute a certificate of recount pursuant to Subsection E of Section 1-14-16 NMSA 1978.

**T.** The district court judge and county clerk shall certify the recount was made in their presence pursuant to Subsection E of Section 1-14-16 NMSA 1978.

**U.** The county clerk shall execute a certificate of recount and send a certificate of recount to the state canvassing board pursuant to Subsection A of Section 1-14-18 NMSA 1978.

**V.** The state canvassing board shall meet and adopt the certificate of recount pursuant to Subsection B of Section 1-14-18 NMSA 1978.

**W.** If no error or fraud appears to be sufficient to change the winner, the county clerk may provide documentation of costs to the secretary of state, or directly to the candidate, for reimbursement from the money provided pursuant to Section 1-14-15 NMSA 1978.  
[1.10.22.11 NMAC - N, 4-28-06]

#### **1.10.22.12 RECOUNT PROCEDURES FOR STATE CANVASSING BOARD RACES:**

**A.** A voting system recheck shall be conducted pursuant to the provisions of the Election Code.

**B.** A recheck shall follow the same procedure as listed in 1.10.22.11 NMAC, except as it applies to Subsection A of Section 1-1-6 NMSA 1978 where recount workers printout the electronic record of votes from each electronic memory device and compare the results against the official

results. The recount workers shall not include the hand tallying procedures for paper ballots in a recheck.

[1.10.22.12 NMAC - N, 4-28-06]

#### **1.10.22.13 CONTEST PROCEDURES FOR STATE CANVASSING BOARD RACES:**

**A.** An election contest shall be conducted pursuant to the provisions of the Election Code under Section 1-14-1 NMSA 1978.

**B.** In any election contest the court may order the re-tallying of absentee ballots, absentee provisional ballots, alternative ballots, emergency paper ballots, in-lieu of absentee ballots, provisional ballots, replacement absentee ballots, presidential ballots and federal ballots. The county clerk shall provide tally sheets for the purpose of the contest.

**C.** In any election contest the court may order comparison of audit tapes or ballot image retention tapes from any direct recording electronic tabulator voting system.

**D.** No rejected ballot, subject to review in an election contest shall be disqualified solely because the signature on the outer envelope or affidavit contains an abbreviated name, lack of a middle initial, or lack of a suffix, provided that the voter can be identified with information provided on the outer envelope or voter's affidavit.

**E.** If a tally of qualified provisional ballots is required in an election contest, the court may summon the county clerk to re-tally all qualified provisional ballots and review all rejected provisional ballots.

[1.10.22.13 NMAC - N, 4-28-06]

#### **HISTORY of 1.10.22 NMAC:**

History of Repealed Material:  
1.10.22 NMAC Provisional Voting Security (filed 8-1-03) - Repealed effective 4-28-06

### **NEW MEXICO SECRETARY OF STATE**

**This is an amendment to 1.10.12 NMAC, Sections 6, 7, 8, 9, 11, 12 and 15, effective 4-28-06.**

**1.10.12.6 OBJECTIVE:** The Absent Voter Act (Sections 1-6-1 through 1-6-18 NMSA 1978) hereinafter referred to as the act was enacted by Laws 1969, Chapter 240, Section 127. Pursuant to the New Mexico Constitution, Art. IV, Section 23, the act was amended by Laws 1999, Chapter 267, Laws 2001, Chapter 58 [and] Laws 2003, Chapter 357 and Laws 2005, Chapter 270. The purpose of the act is to allow voters to vote twenty-eight (28) days

prior to an election on paper ballots or voting systems in person at the office of their county clerk or to vote in person at an alternate location or mobile alternate voting location established by the county clerk on paper ballots or a voting machine. The Absent Voter Precinct Act (Sections 1-6-19 through 1-6-25 NMSA 1978 was enacted by Laws 1969, Chapter 54, Section 1). The objective of this rule is to establish rules and regulations protecting the integrity, security and secrecy of the absentee ballot.

[1.10.12.6 NMAC - N, 3-31-2000; A, 4-30-02; A, 7-15-03; A, 4-28-06]

#### **1.10.12.7 DEFINITIONS:**

**A. "Absentee ballot"** means a method of voting by ballot, accomplished by a voter who is absent from his polling place on election day.

**B. "Absentee ballot register"** means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant's precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter; and the date and time of receipt of the ballot.

**C. "Absentee voting daily report"** means a form prescribed and approved by the office of the secretary of state consisting of the voting machine serial number, beginning public counter number, ending public counter number, beginning protective counter number, ending protective counter number, closing seal number and daily total number of voters per machine. It shall contain a signature line for the county clerk or authorized deputy and a line for the date.

**D. "Alternate location"** means a site outside the office of the county clerk, established by the county clerk, where a voter may cast an absentee ballot and includes mobile alternate voting locations.

**E. "Application"** means an absentee ballot application, prescribed by the secretary of state.

**F. "Ballot"** means a paper ballot card used on an optical scan vote tabulating machine or direct recording electronic voting system.

**G. "Challenger"** means a voter of a precinct in that county to which he is appointed as challenger.

**H. "County canvassing board"** means the board of county commissioners in each county (Section 1-13.1 NMSA 1978).

**I. "Direct recording electronic voting system"** means one that records votes by means of a ballot display provided with electro-optical devices that can be actuated by the voter; that processes

the data by means of a computer program, and that records ballot images in internal memory devices. It produces a tabulation of the voting data as a hard copy or stored in a removable memory device.

**J. "Election"** means any special statewide election, general election, primary election or special elections to fill vacancies in the office of United States representative and regular or special school district elections.

**K. "Early voter"** means a voter who votes in person before election day, and not by mail.

**L. "Election cycle"** means the period of time commencing at 7:00 a.m. on the day of the general election until 7:00 p.m. on the day of the general election two (2) years subsequent.

**M. "Electronic vote tabulating (EVT) marksense voting system" or "optical scan vote tabulating system"** means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot card imprinted on either or both faces with text and voting response locations. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response locations.

**N. "High-speed central count marksense ballot tabulator"** means a self-contained optical scan ballot tabulator, that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high-speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

**O. "Marksense ballot"** means a paper ballot card used on an electronic vote tabulating marksense vote tabulating system, optical scan vote tabulating system or high-speed central count marksense vote tabulator.

**P. "Overvoted ballot"** means a ballot on which the voter has voted for more than the number of candidates to be elected for that office, or in both the affirmative and negative on a ballot question.

**Q. "Precinct board"** means the absent voter precinct board: appointed election officials pursuant to Section 1-6-24 NMSA 1978).

**R. "Provisional absentee voter"** means an absentee voter who is required to submit identification pursuant to Subparagraphs (a) and (b) of Paragraph (4) of Subsection I of Section 1-4-5.1 or a voter whose name does not appear on the roster at an alternate location or mobile alternate voting location.

**S. "Voter"** means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United

States and who is registered under the provisions of the Election Code of the state of New Mexico.

**T. "Voting response area"** means the place on an absentee ballot where the voter is instructed to mark his preference for a candidate or question.

[1.10.12.7 NMAC - N, 3-31-2000; A, 4-30-02; A, 7-15-03, A 4-30-04; A, 4-28-06]

#### 1.10.12.8 APPLICATION:

**A.** An application for an absentee ballot may be made only on a form prescribed by the secretary of state. The prescribed form may not be altered without approval of the secretary of state.

**B.** Completed applications shall be signed by the voter and returned to his county clerk. Applications returned to the county clerk by facsimile means shall not be accepted except as provided by Subsection D of Section 1-6-4.1 NMSA 1978 and Subsection G of Section 1-6-5 NMSA 1978. The county clerk shall not accept any application without the original signature of the voter except as provided by Subsection D of Section 1-6-4.1 NMSA 1978 and Subsection G of Section 1-6-5 NMSA 1978.

[1.10.12.8 NMAC - N, 3-31-2000; A, 4-30-02; A, 7-15-03; A, 4-30-04; A, 4-28-06]

#### 1.10.12.9 ABSENTEE VOTING:

**A.** A voter may vote absentee by:

(1) completing and subscribing an absentee ballot application, wherein the ballot is mailed to the residence or temporary residence of the voter; the voter shall mark the ballot, seal the envelope and sign as provided according to the instructions; the voter may mail or hand-deliver his ballot to the office of the county clerk only, or designate another individual to deliver the ballot pursuant to the Absentee Voter Act;

(2) completing and signing an absentee ballot application in the office of the county clerk; the voter shall mark the ballot, seal the envelope and sign as provided according to the instructions; the voter shall hand-deliver the ballot to the county clerk or designated deputy prior to leaving the office of the county clerk;

(3) completing and signing an absentee ballot application in the office of the county clerk twenty-eight (28) days prior to the election; the voter may cast his ballot on a paper ballot or direct recording electronic voting system or electronic vote tabulating marksense voting system certified and approved for use in New Mexico elections pursuant to Section 1-9-14 NMSA 1978; [E]

(4) completing and signing an absentee ballot application at an alternate

location or mobile alternate voting location established by the county clerk and voting on a direct recording electronic voting system or electronic vote tabulating marksense voting system certified and approved for use in New Mexico elections pursuant to Section 1-9-14 NMSA 1978[~~E~~]; or

(5) requesting electronic transmission of an absentee ballot pursuant to the provisions of Section 1-6-4.1 NMSA 1978 or Subsection G of Section 1-6-5 NMSA 1978; only a federal qualified elector or overseas voter may transmit the ballot back to the county clerk by electronic transmission.

**B.** Upon receipt of the absentee ballot application from the voter, the county clerk or precinct board member shall review it for completeness. The county clerk shall verify the identity of the voter by using the last four digits of the voter's social security number on the absentee application. When it is determined that the application is complete and that the applicant has a valid certificate of registration on file in that county, the county clerk or precinct board member shall mark the application "accepted" with the date and time of receipt and enter the required information in the absentee ballot register. If the applicant is voting absentee in-person, the county clerk or precinct board member shall instruct the voter on how to proceed to vote. The county clerk or precinct board member shall ensure that the applicant votes before leaving the office of the county clerk or alternate location.

**C.** An absentee voter who requests assistance may be assisted only by a person of the voter's own choice, provided that the voter is visually impaired, physically disabled, unable to read or write, or a member of a language minority who has an inability to read well enough to exercise the elective franchise. The precinct board shall note the fact that the voter received assistance and the identity of the person providing the assistance.

**D.** For the purposes of absentee voting, electioneering is not permitted in the office of the county clerk [~~E~~] alternate location, or mobile alternate voting location. Electioneering consists of any form of campaigning within one hundred (100) feet of the county clerk's office or alternate location. Electioneering includes the display of signs and/or campaign literature, campaign buttons, t-shirts, hats, pins, or other such items and includes the verbal solicitation of votes for a candidate or question.

[~~E~~] An absentee voter may file one application for all elections within an election cycle, pursuant to the Election Code.

[~~F~~] E. Alternate locations

shall be sited with respect to serving the convenience of the greatest number of voters, reducing travel time and to ensure a high level of voting system security.

**[G.] E.** An absentee voter who is required to present identification pursuant to the Election Code and has not done so at the time the voter's ballot is mailed, shall be mailed instructions by the county clerk. The instructions shall inform the voter that failure to submit the required documents with the ballot may result in the ballot not being counted. The county clerk shall also instruct the voter not to place the required documents in the inner envelope with the ballot.

**G.** Receipt of electronically transmitted ballots pursuant to the provisions of Section 1-6-4.1 NMSA 1978 shall be by a standalone, non-networked computer, within the office of the county clerk. No electronically transmitted ballot materials shall be received in the office of the county clerk by any computer that is connected to the statewide voter file or other networks that may be damaged by the transmission of computer viruses or other programs that may damage existing systems.

[1.10.12.9 NMAC - N, 3-31-2000, A, 4-30-02; A, 7-15-03, A, 4-30-04; A, 4-28-06]

#### **1.10.12.11 VOTING MACHINE BALLOT SECURITY:**

**A.** At least five days before the absentee voting period commences the county clerk shall prepare, inspect and seal any electronic voting machine in accordance with the specifications provided by the manufacturer-and the provisions of state law.

**B.** One day before the absentee voting period commences, the county clerk shall certify to the secretary of state and all political party county chairs, in a primary, general election or special election for U.S. representative, the type and serial number of each voting machine used in the county for absentee voting. The certification shall be sent by facsimile to the bureau of elections at the office of the secretary of state.

**C.** Each electronic voting machine shall be situated within the office of the county clerk, ~~[or]~~ alternate location or mobile alternate voting location in a physical location that best safeguards the secrecy of the vote and protects the security of the voting system. Only the voter or the person assisting the voter shall be allowed to enter the voting machine or handle the ballot while the voter votes.

**D.** The county clerk shall ensure that each voting machine located within the office of the county clerk or alternate location shall be secured by a lock and key. Each day during the absentee voting period, the county clerk or designated

deputy shall, in the presence of one other employee of the county clerk or precinct board member, unlock the office where the voting machine is located. Similarly, at the close of regular office hours, the county clerk or designated deputy shall, in the presence of one other employee of the county clerk or precinct board member, lock the office where the voting machine is located. Immediately after unlocking or locking the office where the voting machine is located, the county clerk and the employee or precinct board member present shall sign or initial the absentee daily report. The report shall immediately be transmitted by facsimile means to the bureau of elections at the office of the secretary of state. Absentee daily reports for a mobile alternate voting location shall be submitted for the previous day's activity on the next regular business day.

**E.** The county clerk shall prepare a list of those individuals that have authorized access to alternate locations or mobile alternate voting location. This list shall indicate those persons authorized as custodians of voting machine and/or ballot box keys. A copy of this list shall be provided to the office of the secretary of state and, in a primary, general election or special election for U.S. representative, the chairs of each county's political parties.

**F.** Thirty (30) days prior to the beginning of early voting, a county clerk that establishes an alternate location or mobile alternate voting location shall notify the secretary of state of the dates, times and locations. The county clerk shall also submit a security plan which includes, but is not limited to, a method to secure that no voter who has cast a ballot at an alternate location or mobile alternate voting location may then cast a ballot at the voter's polling place on election day. Certificates of voting machine preparation for voting systems at alternate locations and mobile alternate voting locations shall be submitted to the secretary of state pursuant to Section 1-11-7 NMSA 1978.

**G.** The county clerk shall publicize the date, time of operation and location of any alternate location or mobile alternate voting location using media directed to, and appropriate for the voters of that area.

**H.** A county clerk may exercise the discretion to designate a mobile alternate voting location if the clerk deems it will assist voters in rural areas of the county. Mobile alternate voting locations shall be staffed by a precinct board consisting of a minimum of two registered voters of the county of different political parties or without political party affiliation. The county clerk shall ensure that each mobile alternate voting location has interpreters as may be required by state or federal law or

federal consent decree.

[1.10.12.11 NMAC - N, 3-31-2000; A, 7-15-03, A, 4-30-04; A, 4-28-06]

#### **1.10.12.12 ABSENTEE BALLOT BOX SECURITY:**

**A.** The county clerk or authorized deputy shall be the sole custodian of absentee ballot box keys and shall take all appropriate measures to provide for the security of such keys.

**B.** Absentee ballot boxes shall not be opened from the commencement of absentee voting until election day, except as provided by Section ~~[1-6-14(H)]~~ 1-6-11 NMSA 1978.

**C.** A county clerk shall provide separate absentee ballot boxes for each legislative district.

**D.** Absentee ballot boxes shall be located in a physical location in the county clerk's office that best safeguards the security and secrecy of the ballot.

[1.10.12.12 NMAC - N, 3-31-2000; A, 4-28-06]

#### **1.10.12.15 A B S E N T E E PRECINCT BOARDS:**

**A.** On election day, or pursuant to Section 1-6-11 NMSA 1978, prior to 7:00 a.m., the county clerk shall issue a receipt for all voting machines and ballot boxes to a special deputy county clerk. The receipt shall indicate the date and time the machine was removed from the office of the county clerk or alternate location, by whom, the serial number of the machine and the number of votes recorded on the machine. At 7:00 a.m. on election day, or pursuant to Section 1-6-11 NMSA 1978, a special deputy county clerk shall deliver the electronic voting machines, all ballot boxes and the absentee ballot register to the absentee precinct board. The special deputy county clerk shall obtain a receipt executed by the presiding judge and each election judge specifying the serial number of the machine, the number of votes recorded on the machine, the number of ballot boxes delivered and shall return such receipt to the county clerk for filing.

~~**B.** Absent voter precincts shall coincide with the boundaries of state representative districts. In multi-county representative districts, the boundaries of the absent voter precinct shall coincide with the boundaries of that portion of the representative district lying within the county.~~

~~**[C.] B.** The county clerk shall issue red pencils to be used as writing instruments by the precinct board, except the presiding judge shall be issued an ink pen for the purpose of signing and filling out documents required by the Election Code. Precinct board members handling and/or counting ballots shall have no other writing or marking instruments.~~

~~D.~~ C. If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, precinct board members shall count the ballot only if the voter has marked a cross (X) or a check (✓) within the voting response area, circled the name of the candidate or both. A ballot shall also be counted when the voter, attempting to complete the arrow, has marked an arrowhead on the tail portion of the arrow in the voting response area. In no case, shall the precinct board mark or remark the ballot. In the instance of machine malfunction, the precinct board shall hand tally ballots.

~~E.~~ D. Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period and absentee ballots cast in-person on a voting machine in the office of the county clerk or at an alternate location shall be counted by precinct.

~~F.~~ E. Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period shall not be counted on the same voting system used for in-person voting at the office of the county clerk or on any voting system used at an alternate location.

F. ~~The absentee precinct board shall tally alternative, replacement, presidential and federal ballots only after determination that the voter has not voted with an absentee ballot or in person as an early voter.~~

G. ~~An absentee ballot without a signature on the outer envelope shall be rejected, pursuant to the provisions of the Election Code, however a signature shall not be rejected because it contains an abbreviated name, lack or middle initial or name, or lack of suffix, provided that the absentee precinct board can identify the voter with other information provided on the outer envelope.~~

[1.10.12.15 NMAC - N, 3-31-2000, A, 4-30-02; A, 7-15-03, A 4-30-04; A, 4-28-06]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.1 NMAC, Section 7, effective 4/28/06.

3.1.1.7 **DEFINITIONS:**  
**“SIGN” DEFINED:** As used in Section 7-1-71.1 NMSA 1978 and 3.1.1.18 NMAC the term “sign” means to affix a name or cause it to be attached using one of the following methods:

- A. handwritten;
- B. rubber stamp;
- C. mechanical device  
(such as a mechanical pen);

D. computer software program; or

E. any other method of signature acceptable under the Internal Revenue Code.

[10/31/96; 3.1.1.7 NMAC - Rn, 3 NMAC 1.1.7, 12/29/00; A, 4/28/06]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.12 NMAC, Section 12, effective 4/28/06.

### 3.1.12.12 **LIQUOR WHOLE-SALE REPORTING REQUIREMENTS:**

Any person doing business in the state of New Mexico as a liquor wholesaler shall file monthly reports, providing sales information necessary to the administration of the Gross Receipts and Compensating Tax Act, in form and content as prescribed by the department. The monthly report is due by the 25<sup>th</sup> day of the month following the close of the calendar month in which the alcoholic beverages are sold.

[3.1.12.12 NMAC - N, 4/28/06]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.3.1 NMAC, Section 9, effective 4/28/06.

### 3.3.1.9 **RESIDENCY**

#### A. **Full-year residents.**

For purposes of the Income Tax Act, the following are full-year residents of this state:

- (1) an individual domiciled in this state during all of the taxable year, or
- (2) an individual other than an individual described in Subsection D of this Section who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile.

#### B. **Part-year residents.**

(1) An individual who is domiciled in New Mexico for part but not all of the taxable year, and who is physically present in New Mexico for fewer than 185 days, is a part-year resident.

(a) During the first taxable year in which an individual is domiciled in New Mexico, if the individual is physically present in New Mexico for less than a total of 185 days, the individual will be treated as a non-resident of New Mexico for income tax purposes for the period prior to establishing domicile in New Mexico.

(b) An individual domiciled in

New Mexico who is physically present in New Mexico for fewer than 185 days and changes his [~~place of abode~~] domicile to a place outside this state with the bona fide intention of continuing to live permanently outside New Mexico, is not a resident for Income Tax Act purposes for periods after that change of [~~abode~~] domicile.

(2) An individual who moves into this state with the intent to make New Mexico his permanent domicile is a first-year resident. A first-year resident should report any income earned prior to moving into New Mexico as nonresident income even if he is physically present in New Mexico for 185 days or more.

#### C. **“Domicile” defined:**

(1) A domicile is [~~a place of a true, fixed home, a permanent establishment where one intends to return after an absence and where a person] the place where an individual has a true, fixed home, is a permanent establishment to which the individual intends to return after an absence, and is where the individual has voluntarily fixed habitation of self and family with the intention of making a permanent home. Every individual has a domicile somewhere, and each individual has only one domicile at a time.~~

~~[(2) The following individuals are presumed to be domiciled in New Mexico:~~

~~(a) an individual who is registered to vote in the state during a taxable year who has not subsequently registered to vote elsewhere outside this state on or before the last day of the taxable year;~~

~~(b) an individual who holds a valid driver's license issued by the taxation and revenue department pursuant to the Motor Vehicle Code and who has not been subsequently licensed by another state on or before the last day of the taxable year; or~~

~~(c) an individual who has claimed to be a New Mexico resident for any other official purpose, such as eligibility for resident tuition at state schools, colleges or universities, or for hunting or fishing licenses.~~

~~(3) An individual presumed to be domiciled in New Mexico may rebut the presumption by establishing by a preponderance of evidence the state in which the individual is domiciled.]~~

~~(2) Once established, domicile does not change until the individual moves to a new location with the bona fide intention of making that location his or her permanent home.~~

~~(3) No change in domicile results when an individual leaves the state if the individual's intent is to stay away only for a limited time, no matter how long, including:~~

- ~~(a) for a period of rest or vacation;~~
- ~~(b) to complete a particular transaction, perform a contract or fulfill an engagement or obligation, but intends to~~

return to New Mexico whether or not the transaction, contract, engagement or obligation is completed, or

(c) to accomplish a particular purpose, but does not intend to remain in the new location once the purpose is accomplished.

(4) To determine domicile, the department shall give due weight to an individual's declaration of intent. However, those declarations shall not be conclusive where they are contradicted by facts, circumstances and the individual's conduct. In particular, the department will consider the following factors in determining whether an individual is domiciled in New Mexico (the list is not intended to be exclusive and is in no particular order):

(a) homes or places of abode owned or rented (for the individual's use) by the individual, their location, size and value; and how they are used by the individual;

(b) where the individual spends time during the tax year and how that time is spent; e.g., whether the individual is retired or is actively involved in a business, and whether the individual travels and the reasons for traveling, and where the individual spends time when not required to be at a location for employment or business reasons, and the overall pattern of residence of the individual;

(c) employment, including how the individual earns a living, the location of the individual's place of employment, whether the individual owns a business, extent of involvement in business or profession and location of the business or professional office, and the proportion of in-state to out-of-state business activities;

(d) home or place of abode of the individual's spouse, children and dependent parents, and where minor children attend school;

(e) location of domicile in prior years;

(f) ownership of real property other than residences;

(g) location of transactions with financial institutions, including the individual's most active checking account and rental of safety deposit boxes;

(h) place of community affiliations, such as club and professional and social organization memberships;

(i) home address used for filing federal income tax returns;

(j) place where individual is registered to vote;

(k) state of driver's license or professional licenses;

(l) resident or nonresident status for purposes of tuition at state schools, colleges and universities, fishing and hunting licenses, and other official purposes; and

(m) where items or possessions

that the individual considers "near and dear" to his or her heart are located, e.g., items of significant sentimental or economic value (such as art), family heirlooms, collections or valuables, or pets.

(5) The department shall evaluate questions regarding domicile on a case-by-case basis. No one of the factors considered by the department shall be conclusive with respect to an individual's domicile. Factors such as the state of driver's license, place of voter registration and home address may be given less weight, depending on the circumstances, because they are relatively easy to change for tax purposes.

#### **D. "Domicile" and residency for armed forces personnel.**

(1) A resident of this state who is a member of the United States armed forces does not lose residence or domicile in this state, or gain residency or domicile in another state, solely because the service member left this state in compliance with military orders.

(2) A resident of another state who is a member of the United States armed forces does not acquire residence or domicile in this state solely because the service member is in this state in compliance with military orders.

(3) A resident of another state who is a member of the United States armed forces does not become a resident of this state solely because the service person is in this state for one hundred and eighty-five (185) or more days in a taxable year.

(4) Compensation for service in the armed forces is subject to personal income tax only in the state of the service member's domicile. "Compensation for military service" does not include compensation for off-duty employment, or military retirement income.

(5) For purposes of this section, "armed forces" means all members of the army of the United States, the United States navy, the marine corps, the air force, the coast guard, all officers of the public health service detailed by proper authority for duty either with the army or the navy, reservists placed on active duty, and members of the national guard called to active federal duty.

#### **E. Examples:**

(1) A, a life-long resident of Texas, accepts a job in New Mexico. On December 5, 2003, A moves to New Mexico with the intention of making New Mexico her permanent home. A has established domicile in New Mexico during the 2003 tax year. Because she was physically present in New Mexico for fewer than 185 days during that year, she should file as a part-year resident, and she will be treated as a resident for personal income tax purpose only for that period after she establishes a New Mexico domicile.

(2) B, a resident of Arizona,

makes several weekend visits to New Mexico in the early months of 2004. On July 1, 2004, he moves to New Mexico with the intention of making it his permanent home. Family matters call him back to Arizona on August 1, 2004, and he soon determines that he must remain in Arizona. B was domiciled in New Mexico during the thirty days he spent in this state with the intention of making it his permanent home. Because B was physically present in this state for fewer than 185 days in 2004, B should file as a part-year resident for that tax year. For personal income tax purposes he will be treated as a resident of New Mexico only from July 1 to August 1, 2004.

(3) C was born and raised in New Mexico. She leaves New Mexico in December 2003 to pursue a two-year master's degree program in Spain. She intends to return to New Mexico when she completes her studies. During her absence she keeps her New Mexico driver's license and voter registration. Because New Mexico remains her domicile, C should file returns for tax years 2003, 2004 and 2005 as a full-year New Mexico resident.

(4) D, a resident of California, comes to New Mexico on three separate occasions in 2004 to work on a movie. D does not intend to remain in New Mexico, and when the movie is completed, D returns to her home in California. D is physically present in New Mexico for 200 days in 2004. Because D was physically present in New Mexico for at least 185 days, D must file as a full-year resident of New Mexico for tax year 2004.

(5) E, a resident of New Mexico, joined the army. Since joining the military, E has been stationed in various places around the world. Although E has not been back to New Mexico in the ten years since he joined the army, he continues to vote in New Mexico and holds a current New Mexico driver's license. E must file as a full-year resident of New Mexico.

(6) Same facts as Example 5, except that in August 2003, while stationed in Georgia, E retires from the military. Instead of returning to New Mexico, E moves to Florida where he intends to spend his retirement. For tax year 2003, E must file as a part-year resident, because he was not physically present in the state for 185 days or more. E is a resident of New Mexico until August 2003, when he moves to Florida with the intent of making that his permanent home.

(7) F, a resident of Texas, is an air force officer. In March 2002 he moves to New Mexico with his spouse to begin a two-year assignment at Kirtland Air Force Base. F is registered to vote in Texas and holds a Texas driver's license. F is not a resident of New Mexico in 2002. F's spouse is a full-year resident of New



Mexico in 2002, regardless of domicile, because she is physically present in New Mexico for 185 days or more. During the second year of F's assignment, he registers to vote in New Mexico, obtains a New Mexico driver's license, and enrolls his son in a New Mexico university paying resident tuition. Although F's presence in New Mexico under military orders is not sufficient to establish New Mexico residency or domicile, his conduct in 2003 is sufficient to establish domicile. In 2003 F must file as a part-year resident of New Mexico. He will be treated as a non-resident for income tax purposes for that period of 2003 prior to establishing domicile in New Mexico.

(8) G is a Native American who lives and works on his tribe's pueblo in New Mexico. Federal law prohibits the state from taxing income earned by a Native American who lives and works on his tribe's territory. G joins the marines and is stationed outside New Mexico. Because G's domicile remains unchanged during his military service, G's income from military service is treated as income earned on the tribe's territory by a tribal member living on the tribe's territory, and is not taxable by New Mexico.

[10/23/85, 12/29/89, 3/16/92, 6/24/93, 1/15/97; 3.3.1.9 NMAC - Rn & A, 3 NMAC 3.1.9, 12/14/00, A, 4/29/05; A, 4/28/06]

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**End of Adopted Rules Section**

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## Other Material Related to Administrative Law

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### 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, May 5, 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. Disciplinary matters may also be discussed.

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.

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**End of Other Related  
Material Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

**2006**

<b>Volume XVII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
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.