

**NEW
MEXICO
REGISTER**

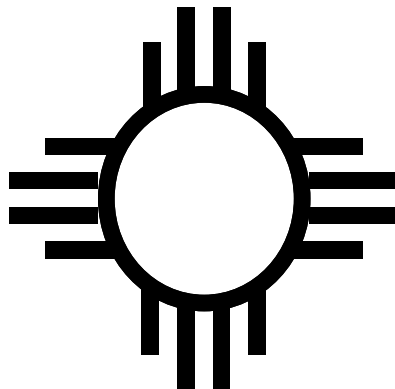


Volume XVIII
Issue Number 14
July 31, 2007

New Mexico Register

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

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New Mexico Register

Volume XVIII, Number 14

July 31, 2007

Table of Contents

Notices of Rulemaking and Proposed Rules

Agriculture, Department of	
Notice of Hearing	623
Environmental Improvement Board	
Notice of Rulemaking Hearing (20.2.2 NMAC; 20.2.73 NMAC and 20.2.87 NMAC)	623
Notice of Rulemaking Hearing (20.2.35 NMAC)	623
Finance and Administration, Department of	
Local Government Division	
Notice of Public Hearing (Small Cities Community Development Block Grant)	624
Human Services Department	
Income Support Division	
Notice of Public Hearing (LIHEAP)	634
Notice of Public Hearing (Cash Assistance Program)	634
Medical Board	
Notice of Regular Board Meeting and Rule Hearing	635
Osteopathic Medical Examiners, Board of	
Legal Notice	635
Pharmacy, Board of	
Notice to the Public - Regular Board Meeting	635
Public Regulation Commission	
Insurance Division	
Notice of Hearing to Consider the Promulgation of Premium Rates and Procedural Order (Title Insurance)	636
Notice of Hearing to Address Matters Related to the Regulation of Title Insurance Other than the Promulgation of Premium Rates and Procedural Order	637
Notice of Hearing on Proposed Rulemaking and Procedural Order (In the Matter of 13.9.17 NMAC, Military Sales Practices)	638
Regulation and Licensing Department	
Construction Industries Division	
Notice of Public Hearing	639
Manufactured Housing Division	
Cancellation of the Legal Notice; Notification of Public Hearing Rulemaking; Manufactured Housing Committee	639
Legal Notice; Notification of Public Hearing Rulemaking; Manufactured Housing Committee	639

Adopted Rules

Effective Date and Validity of Rule Filings

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

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

Children, Youth and Families Department	
8.14.13 NMAC R Regional Juvenile Services Grant Fund	641
8.14.13 NMAC N Juvenile Continuum Grant Fund	641
Family Services Division	
8.8.7 NMAC N Court Ordered Domestic Violence Offender Treatment Programs	642
Environmental Improvement Board	
20.2.99 NMAC A Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects	644
Finance and Administration, Department of	
Local Government Division	
2.40.3 NMAC A Civil Legal Services Fund	656

Human Services Department		
Medical Assistance Division		
8.310.13 NMAC	N	Telehealth Services 657
Public Regulation Commission		
Utility Division		
NMPSC Rule 770	R	Procedures for Review of Rates Proposed by Small Water Utilities 659
NMPSC Rule 970	R	Procedures for Review of Rates Proposed by Sewer Utilities Having Annual Operating Revenues Averaging Less Than \$500,000 Over Any Consecutive Three-Year Period. 659
17.12.770 NMAC	N	Small Water Utilities 659
17.13.970 NMAC	N	Small Sewer Utilities 663
17.12.810 NMAC	Rn & A	Procedures for Review of Rates Proposed by Water and Sanitation Districts 667
Public Safety, Department of		
10.10.2 NMAC	A	Application Procedures Governing the Edward Byrne Memorial Justice Assistance Grant Program. 668

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Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

The Pecos Valley Cotton Boll Weevil Control District will hold a public hearing under the Cotton Boll Weevil Control Act, 76-6A-1 to 76-6A-16, NMSA 1978, to reduce the assessment rate to \$5 per bale.

The hearing will be held at the NMSU Ag Center located at 67 E. Four Dinkus Road, Artesia, New Mexico, beginning at 2:00 p.m. on August 22, 2007. Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m. on August 22, 2007. Written statements, inquiries, or requests for copies of the rule should be directed to Mr. Dwight Menefee, P.O. Box 595, Artesia, New Mexico 88211-0595.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on October 2, 2007 at 9:00 a.m. at the New Mexico State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe, NM 87501, for the purpose of hearing the matter in EIB No. 07-06(R), the New Mexico Environment Department's ("NMED") proposal to adopt a new regulation, 20.2.87 NMAC (Greenhouse Gas Emissions Reporting), and make related revisions to 20.2.2 NMAC (Definitions) and 20.2.73 NMAC (Notice of Intent and Emission Inventory Requirements). These regulations are part of a broader state effort to address emissions of greenhouse gases. The proposed revisions to 20.2.73 NMAC authorize NMED to expand the existing criteria air pollutant reporting requirement to include greenhouse gases. The proposed regulation, 20.2.87 NMAC, requires specific greenhouse gas reporting for three industrial sectors - power plants, refineries and cement manufacturing plants. The proposed revisions to 20.2.2 NMAC add definitions applicable to both 20.2.73 and 20.2.87 NMAC.

The proposed regulations may be reviewed

during regular business hours at the NMED Air Quality Bureau office, 2044 Galisteo, Santa Fe, New Mexico, on NMED's web site at www.nmenv.state.nm.us, or by contacting Brad Musick at (505) 955-8019 or brad.musick@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9, NMSA 1978, the Air Quality Control Act Section, 74-2-6, NMSA 1978, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses.

Persons wishing to present technical testimony must file a written notice of intent including the following:

- (1) identify the person for whom the witness(es) will testify;
- (2) 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;
- (3) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent should reference the docket number, EIB No. 07-06(R) and the date of the hearing, and must be received in the Board's Office at the following address no later than 5:00 pm on September 18, 2007:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

Persons, including members of the public, wishing to present non-technical testimony may do so without prior notification. Any such person also may offer exhibits in support of his testimony. Alternatively, any

such person may submit a written statement for the record prior to or at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by September 18, 2007 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users may access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulations at the conclusion of the hearing or may convene another meeting for that purpose.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on October 2, 2007 at 9:00 a.m. at the New Mexico State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe, NM, 87501. The purpose of the hearing is to consider the matter of EIB 07-07 (R) to amend a regulation, 20.2.35 NMAC (Natural Gas Processing Plant - Sulfur). The proposed amendments would (1) add standard rule language to the effective date in 20.2.35.5 NMAC, (2) authorize owners and operators to use air dispersion modeling to determine compliance with the stack height requirement in 20.2.35.111.A NMAC, and (3) change "subsection" to "section" in 20.2.35.11.B.

The proponents of the proposed amendments are the New Mexico Environment Department ("NMED") and DCP Midstream, LP.

The proposed amendments may be reviewed during regular business hours at the NMED Air Quality Bureau office, 2044 Galisteo, Santa Fe, New Mexico, on NMED's web site at www.nmenv.state.nm.us, or by contacting Andy Berger at (505) 955-8034 or andy.berger@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures – Environmental Improvement Board), the Environmental Improvement

Act, Section 74-1-9, NMSA 1978, the Air Quality Control Act Section, 74-2-6, NMSA 1978, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses.

Persons wishing to present technical testimony must file a written notice of intent including the following:

- (1) identify the person for whom the witness(es) will testify;
- (2) 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;
- (3) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed new and revised regulations.

Notices of intent should reference the docket number, EIB No. 07-07(R) and the date of the hearing, and must be received in the Board's Office at the following address no later than 5:00 pm on September 18, 2007:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87502
Phone: (505) 827-2425, Fax (505) 827-2836

Persons, including members of the public, wishing to present non-technical testimony may do so without prior notification. Any such person also may offer exhibits in support of his testimony. Alternatively, any such person may submit a written statement for the record prior to or at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by September 18, 2007 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users may access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulations at the conclusion of the hearing or may convene another meeting for that purpose.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

LOCAL GOVERNMENT DIVISION

The Department of Finance and Administration, Local Government Division ("DFA") hereby gives notice that DFA will conduct a public hearing in Room 565, 5th Floor, PERA Building, 1120 Paseo De Peralta, Santa Fe, New Mexico, 87503, on September 10, 2007 at 10:00 a.m. concerning amendments to 2.110.2.7 NMAC, 2.110.10 NMAC, 2.110.11 NMAC, 2.110.17 NMAC, 2.110.18 NMAC, 2.110.19 NMAC, 2.110.20 NMAC, 2.110.21 NMAC, 2.110.25 NMAC, and 2.110.26 NMAC of the Small Cities Community Development Block Grants Rule (hereinafter referred to as the "CDBG Rule").

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on September 7, 2007, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed CDBG Rule are available from Ms. Ariana Vigil, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4975 or from the DFA internet website <http://nmdfa.state.nm.us>

IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A READER, AMPILIFER, QUALIFIED SIGN LANGUAGE INTERPRETER OR ANY OTHER FORM OF AUXILIARY AID OR SERVICES TO ATTEND OR PARTICIPATE IN THE HEARING, PLEASE CONTACT OUR OFFICES ONE WEEK PRIOR TO THE MEETING, OR AS SOON AS POSSIBLE.

TITLE 2 PUBLIC FINANCE CHAPTER 110 LOCAL GOVERNMENT GRANTS PART 2 SMALL CITIES COMMUNITY DEVELOPMENT BLOCK GRANT

2.110.2.7 DEFINITIONS:

A. "Asset management" is a systematic process of maintaining, upgrading, and operating physical assets cost-effectively. It combines engineering

principles with sound business practices and economic theory, and it provides tools to facilitate a more organized, logical approach to decision making. It is a planning process that ensures the most value from each asset with a plan to rehabilitate and replace them when necessary. An accurate and up-to-date asset management plan will help communities comply with the Government Accounting Standards Board's Statement #34 (GASB 34), an accounting standard for publicly owned systems.

[A-] B. "Council" means the New Mexico community development council.

[B-] C. "Department" means the department of finance and administration.

[C-] D. "Division" means the local government division.

[D-] E. "Low and moderate income person" is a member of a household whose income would qualify as "very low income" under the Section 8 housing assistance payments program. Section 8 limits are based on 50 percent of the county median income. Similarly, CDBG moderate income is based on Section 8 "lower income" limits, which are generally tied to 80 percent of the county median income.

[E-] F. "CDBG" means the small cities community development block grant program.

[F-] G. "Rural" means a county with a population of less than 25,000 and an incorporated municipality with a population of less than 3,000.

[G-] H. "Program income" means amounts earned by a unit of general local government or its sub recipient that were generated from the use of CDBG funds.

[H-] I. "Slum area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area in which there is a predominance of buildings or other improvements which are found by the local governing body by reason of 1) dilapidation, 2) deterioration, 3) age, or 4) obsolescence, 5) inadequate provision for ventilation, light, air, sanitation or open spaces, 6) overcrowding, 7) the existence of conditions which endanger life or property, or 8) any combination of such factors, to contribute to either ill health, the transmission of disease, infant mortality, juvenile delinquency or crime, and to be detrimental to the public health, safety, morals or welfare.

[I-] J. "Blighted area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area, other than a slum area, which is found by the local governing body by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street

layout, faulty low layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivisions or obsolete platting, or the existence of conditions which endanger life or property, or any combination of such factors to substantially impair or arrest the sound growth of the municipality, retard the provision of housing accommodations or constitute an economic or social liability and is a menace to the public health, safety, morals or welfare in its present conditions and use.

~~[J.]~~ **K.** "Units of local government": Any incorporated municipality or county.

~~[K.]~~ **L.** "Councils of governments": A regional association of municipalities, counties and special districts formed to provide planning and other services to its member organization.

~~[L.]~~ **M.** "Water association": Political subdivisions of the state organized under Section 3-29-1 through Section 3-29-20, NMSA 1978, the "Sanitary Projects Act" or Section 73-21-1 through Section 73-21-55, NMSA 1978, the "Water and Sanitation District Act".

~~[M.]~~ **N.** Land Grant/Meced (political subdivision of the state organized under Section 49-1-1 through 49-1-23, NMSA 1978, Land Grants General Provisions.

[2.110.2.7 NMAC - Rp 2 NMAC 110.2.7, 08-30-01, 12-14-06; A, XX-XX-07]

2.110.2.10 ELIGIBLE APPLICANTS

A. All counties, ~~[and]~~ incorporated municipalities, and New Mexico mortgage finance authority (MFA) are eligible to apply except: the city of Albuquerque, the city of Farmington, the city of Las Cruces, the city of Santa Fe and the city of Rio Rancho who cannot apply since they receive funding directly from the department of housing and urban development (Title I, Section 106) as entitlement cities.

B. Other entities such as water associations, sanitation districts, land grants, public nonprofit groups, etc., cannot apply directly for assistance.

C. However, these entities may be involved in the execution of an approved CDBG project if the eligible applicant chooses to operate the program through such an entity under a contractual agreement.

D. Indian pueblos and tribes receive funding directly from the department of housing and urban develop-

ment (Title I, Section 107). Native American tribes are encouraged to submit applications to the Albuquerque HUD Office of Native American Programs, 201 3rd St., N.W., Suite 1830, Albuquerque, New Mexico 87102-3368, (505) 346-6923. [2.110.2.10 NMAC - Rp 2 NMAC 110.2.10, 08-30-01; A, 08-13-04 A, XX-XX-07]

2.110.2.11 ELIGIBLE ACTIVITIES/CATEGORIES

A. Applicants may apply for funding assistance under the following categories:

- (1) community infrastructure;
- (2) housing;
- (3) public facility capital outlay;
- (4) economic development;
- (5) emergency;
- (6) colonias;
- (7) planning.

B. Eligible activities under each of the categories are listed below.

C. Community infrastructure: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition
- (2) construction ~~[and/or]~~ or rehabilitation of the following:
 - (a) water systems;
 - (b) sewer systems;
 - (c) municipal utilities;
 - (d) roads;
 - (e) streets;
 - (f) highways;
 - (g) curbs;
 - (h) gutters;
 - (i) sidewalks;
 - (j) storm sewers;
 - (k) street lighting;
 - (l) traffic control devices;
 - (m) parking facilities;
 - (n) solid waste disposal facilities.

D. Housing: Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition;
- (2) rehabilitation;
- (3) clearance;
- (4) demolition and removal of privately-owned or acquired property for use or resale in the provision of assisted housing;
- (5) provision of public facilities to increase housing opportunities;
- (6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs;
- (7) certain types of housing modernization;
- (8) temporary relocation assis-

tance;

- (9) code enforcement;
- (10) historic preservation activities;
- (11) ~~[an average of \$30,000]~~ not to exceed fifty thousand dollars (\$50,000) in CDBG funds per home can be used on home rehabilitation/repair activities.

E. Public facility capital outlay: Eligible activities may include, but are not limited to, such items as:

- (1) real property acquisition;
- (2) construction or improvement of community centers;
- (3) senior citizen centers;
- (4) nonresidential centers for the handicapped such as sheltered workshops;
- (5) other community facilities designed to provide health, social, recreational or similar community services for residents.

F. Economic development: The economic development category is established to assist communities in the promotion of economic development and is described in detail in Section 26.

G. Emergency: The emergency fund provides funding for emergency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.

(1) Applications under this category will be accepted throughout the year.

(2) ~~[An appropriate state agency must concur and provide]~~ Application shall include written verification and adequate documentation by a state agency and with the applicant's assessment of the life threatening situation and shall be submitted no later than 18 months from the certification by the applicant and documentation of the need for the emergency project.

(3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

H. Planning: In addition to municipalities and counties, water associations, including water and sanitation districts, and land grants as defined in Section 2.110.2.7, Subsection ~~[L.]~~ M.; are eligible to apply directly for planning grants only. ~~[Grant assistance from the CDBG program must be used for a comprehensive plan, if a community or county does not have a current comprehensive plan (adopted or updated within the last five years) that includes at a minimum the following.]~~ Planning grant assistance from the CDBG program, which is available only to a municipality or county, must be used for a comprehensive plan if the applicant does not have a current com-

prehensive plan. A comprehensive plan must be adopted by ordinance, and it must include as a minimum the following elements:

(1) elements:

(a) land use; including (i) an analysis and mapping of existing land patterns and an inventory of the amount, type and intensity of uses by land category, as well as an analysis of effects of various land use patterns on greenhouse gas emissions; (ii) an analysis of trends in the supply and demand of land by land use category, including a projection of the distribution, location and extent of future land uses by land use category over a twenty-year period; (iii) goals, objectives and policies that address maintaining a broad variety of land uses, including the range of uses existing when the plan is adopted or amended; and (iv) specific actions and incentives that the contracting agency may use to promote planned development, reduction in greenhouse gas emissions, or otherwise encourage certain identified development patterns and the locations where such development patterns should be encouraged;

(b) housing; including (i) an analysis of existing housing supply and demand, analysis of greenhouse gas emissions from the housing sector, and forecasted housing needs; (ii) goals, objectives and policies for the improvement of housing quality, variety and affordability, for reduction of greenhouse gas emissions, and for provision of adequate sites for housing and housing opportunities for all segments of the community; and (iii) a description of the actions that will be taken to implement housing goals, objectives and policies;

(c) transportation; including (i) description and assessment of the location, type, capacity and condition of existing transportation facilities, such as freeways, arterial and collector streets, mass transit or other modes of transportation as may be appropriate, and analysis of greenhouse gas emissions from the transportation sector; (ii) goals, objectives and policies for encouraging safe, convenient, efficient and economical transportation, including mass transit and facilities for bicyclists and pedestrians, for reduction of greenhouse gas emissions, and a description of proposed levels of service and funding mechanisms; and (iii) a description and assessment of proposed location, type and capacity of proposed transportation facilities designed to implement transportation goals, objectives and policies and a description of funding mechanisms that will be used to fund proposed transportation improvements;

(d) infrastructure; including (i) a description and assessment of the location, type, capacity and condition of existing infrastructure, including emergency services, sewage, drainage, local utilities

and other types of facilities; (ii) goals, objectives and policies for promoting the efficient provision of infrastructure, including a description of proposed levels of service; and (iii) a description and assessment of proposed facility expansion and improvements designed to support planned uses and implement infrastructure goals, objectives and policies;

(e) economic development; including (i) a description of existing job composition and trends by industry and location characteristics, such as access to transportation or proximity to natural or human resources, that influence the economic development potential of the contracting agency, and analysis of greenhouse gas emissions from the commercial and industrial sectors; (ii) goals, objectives and policies for promoting economic development, and for reduction of greenhouse gas emissions; and (iii) a description of the actions that the contracting agency will take to implement economic development goals, objectives and policies;

(f) water; including (i) description and assessment of the sources of water supply; (ii) the demand for water by residential, commercial, institutional, industrial and recreational sectors; (iii) assessment of the unaccounted for water losses due to leaks, theft or other reasons; (iv) goals, objectives and policies for promoting the efficient use of water and for managing periods of drought; and (v) an analysis of the demand for water that will result from future growth projected in the plan, when added to existing uses, and how the demand for water that will result from future projected growth will be served by current water supplies, water conservation, water reuse or a plan to obtain additional water supplies or increase water use efficiencies;

(g) hazards; including (i) an analysis of the risks of hazards such as wildfire, floods, extreme weather conditions, accidents, and terrorism; (ii) goals, objectives and policies for hazard mitigation; and (iii) a description of the actions that will be taken to mitigate hazards;

(h) implementation; a compilation of [programs and specific actions to be completed in a stated sequence.] the plan's goals, objectives, policies, standards or guidelines, along with specific actions to be completed in a stated sequence, which start with adoption of the comprehensive plan by ordinance.

(2) development of additional elements of a comprehensive plan may include, but are not limited to:

- (a) drainage;
- (b) parks, recreation and open space;
- (c) tourism;
- (d) growth management;
- (e) fiscal impact analysis;

(f) intergovernmental cooperation;

(g) social services;

(h) historic preservation;

(i) asset management plan;

(3) if the entity has a current comprehensive plan, it may apply for funding assistance for any of the following:

~~{(4)}~~ (a) data gathering analysis and special studies;

~~{(5)}~~ (b) base mapping, aerial photography, geographic information systems, or global positioning satellite studies;

~~{(6)}~~ (c) improvement of infrastructure capital improvement plans and individual project plans;

~~{(7)}~~ (d) development of codes and ordinances, ~~{(e)}~~ that further refine the implementation of the comprehensive plan;

~~{(8)}~~ other functional or comprehensive planning activities;

~~{(9)}~~ related citizen participation or strategic planning processes;

~~{(10)}~~ applicants may apply for funding assistance throughout the year as long as funds are available;

~~{(11)}~~ preliminary engineering reports will follow the USDA/RUS guidelines.]

(e) climate change mitigation and adaptation plan;

(f) preliminary engineering report;

(g) related citizen participation or strategic planning process; or

(h) other functional or comprehensive planning activities;

(i) asset management plan;

(j) regionalization of infrastructure and service delivery.

(4) applicants may apply for funding assistance throughout the year as long as funds are available.

(5) preliminary engineering reports must follow USDA/RUS guidelines.

I. Colonias:

(1) The colonias category is established in the amount of 10% of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions which qualify communities for designation to be carried out in areas along the U.S. - Mexican border.

(2) Eligible applicants for the colonias set aside are municipalities and counties located within 150 miles of the U.S. - Mexico border.

(3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

(a) lack of potable water supply;

(b) lack of adequate sewage systems;

(c) lack of decent, safe and san-

itary housing;

(d) must have been in existence as a colonia prior to November, 1990.

(4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.

[2.110.2.11 NMAC - Rp 2 NMAC 110.2.11, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, XX-XX-07]

2.110.2.17 APPLICATION REQUIREMENTS

A. Number of applications - All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing, public facility capital outlay, or colonias categories.

(1) Planning applicants may submit at anytime an additional application for funding and shall not exceed fifty thousand dollars (\$50,000).

(2) [Requests for assistance from eligible] Applicants in the economic development, emergency [and planning categories can be] may be submitted at any time[-] and shall not exceed five hundred thousand dollars (\$500,000), subject to funding availability.

(3) Counties may submit multiple applications for planning grants for water associations.

(4) Planning, economic development and emergency applications may be submitted, at anytime, even if the applicant has not completed other CDBG projects.

~~(3)~~ (5) Counties may submit multiple applications for planning grants for water associations.

B. Single purpose application -An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

C. Joint applications - Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(2) However, other parties to the joint application may submit another application.

(3) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

(4) It should be noted that satisfying the required criteria, which is available from the division upon request, may

take a significant period of time.

~~D. Applications limit — Applications are limited to the amount of funding necessary to complete a basic, meaningful, stand-alone and targeted project within a 24 month period.~~

~~(1) — Applications may not exceed \$500,000 and planning applications may not exceed \$50,000.~~

~~(2) — If, after conducting the required public hearing, an applicant determines that the previous year's CDBG application is still a priority, the applicant must submit an application in its new the current form.~~

~~(3) — The applicant need only submit a current year's resolution, updated project budget and schedule and any other information required by division staff.]~~

D. Application requirements for the following minimum requirements apply to all applications for CDBG funding:

(1) applications must involve a project that will be fully functional on a stand-alone basis once awarded CDBG and other committed funds have been expended and;

(2) projects shall be completed within twenty-four months of an award of funding;

(3) applications may not exceed \$500,000;

(4) if the applicant, after conducting the required public hearing, determines that the previous year's CDBG unfunded application is still a priority, the applicant must submit the original along with a current year's resolution, updated project budget and schedule and any other information required by division staff.

E. Threshold requirements - To encourage timely completion of projects and to maximize participation the following threshold requirements shall be met prior to the application deadline.

(1) All projects for the eligible activities in the categories listed in Subsections C, D, E, and I of 2.110.2.11 NMAC must be completed at the time of application. (certificate of occupancy [and/or] or certification of operation must be in place).

(2) All audit and monitoring findings, [especially in general program administration] for CDBG projects, must be resolved.

(3) The current fiscal operating budget for any local public body applying for CDBG funds must be approved.

(4) The local government division financial management bureau will verify that financial quarterly/ monthly reports are current before CDBG applications deadline.

~~(3)~~ (5) The following set aside

categories are exempt from threshold requirement: planning, economic development, and emergency.

F. Matching requirements - In order to assist the council in making funding resources go further and to ensure there is a local investment in applications submitted to the council for funding consideration, the following will be required.

(1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) Consistent with Section 26 of these regulations, all applications in the economic development category must provide at least two private dollars for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget;

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

~~G. Matching loan fund — In order to assist communities who do not have the resources to comply with the matching requirement for their project, a matching fund is available to provide money at appropriate interest rates.~~

~~(1) — The council will use NMCA reversions as a funding source for the loan fund.~~

~~(2) — Payment schedules will be developed by the division with appropriate payment amounts and due dates.]~~

~~H.] G.~~ Other funding commitments - If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding agency must be submitted with the application.

~~H.] H.~~ Water conservation and drought commitments - In order to make the state's water supplies go further and to ensure proper levels of preparations are

taken locally for periodic droughts, the following is encouraged:

(1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.

(2) Applicants develop, adopt and submit to the state engineer a drought management plan.

(3) The ordinance and plan shall be accompanied by a program for its implementation.

(a) in developing a water conservation ordinance pursuant to this section: applicants shall adopt ordinances and codes to encourage water conservation measures; they shall identify and implement best management practices in their operations to improve conservation of the resources; and

(b) applicants shall consider and incorporate into its plan if appropriate, at least the following:

(i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(ii) low-water-use landscaping and efficient irrigation;

(iii) water-efficient commercial and industrial water-use processes;

(iv) water reuse systems for both potable and non-potable water;

(v) distribution system leak repair;

(vi) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;

(vii) water rate structures designed to encourage water-use efficiency and reuse in a fiscally responsible manner; and

(viii) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

(c) the council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

[J-] I. Asset management - In order to support the long term operation, maintenance, repair and replacement of system facilities, infrastructure, public facilities, or other eligible activities the following will be required.

(1) In order to ensure water and wastewater infrastructure is managed within a strategic framework driven by program and service deliver needs, communities that implement a rate analysis based upon an asset management program will be credited in the application process for their achievement. The model for the asset management program is the EPA publication "Asset

Management: A Handbook for Small Water Systems (EPA 816-R-03-0160 September 2003).

(2) For community infrastructure and public facilities, or other eligible activities an asset management plan will be required to be submitted at the time of application (EPA 816-R-03-0160 September 2003).

[2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04; A, 08-15-05; A, 12-14-06; A, XX-XX-07]

2.110.2.18 APPLICATION PROCEDURES AND CONTENT:

The application packet provided by local government division will be used for infrastructure, housing, public facility, capital outlay, colonias, emergency categories, economic development and planning.

A. An applicant must submit an original and ~~two~~ three copies of each application to the Department of Finance and Administration, Local Government Division, Bataan Memorial Building, Suite 201, Santa Fe, New Mexico 87501, and one copy to the appropriate council of governments.

B. Applications must be received at the local government division by 5 p.m. of the designated application deadline. Applications received after that time will be returned to the applicant unprocessed.

[2.110.2.18 NMAC - Rp 2 NMAC 110.2.18, 08-30-01; A, 08-13-04; A, 12-14-06; A, XX-XX-07]

2.110.2.19 APPLICATION REVIEW AND EVALUATION PROCESS

A. Upon receipt of applications, division staff will review them for eligibility, completeness, feasibility, and compliance and to ensure that all other funding necessary to make the project functional is in place. Applications that are found to be incomplete, ineligible, not feasible or do not have other funding necessary to make the project functional, will be returned to the applicant and will not be considered for funding.

B. Applications will be forwarded to appropriate state agencies for technical review and comment. Review agencies ~~[include]~~ may include, but are not limited to, the environment department, ~~[energy, minerals and natural resources department, state highway and transportation department]~~ department of transportation, department of health, state engineer's office, state agency on aging, economic development department, ~~[department of human services, and]~~ state fire marshal and governor's commission on disability

C. Applicants will be allowed to make presentations to the coun-

cil and division staff at an official council hearing. Testimony related to the application will be presented by an official or designee of the applying entity who may be assisted by technical staff.

D. Division staff will receive comments from state agencies regarding specific projects.

E. The council and division have developed the following rating criteria for evaluation of CDBG applications submitted for funding consideration: infrastructure, housing, public facility, capital outlay and colonias applications.

(1) **Description and need** — (5 points) extent to which the project is needed. The more severe the need as documented in the application, the higher the score. Colonias applicants must provide documentation to substantiate that a majority of the following conditions exist in the project area:

(a) lack of potable water;

(b) lack of an adequate sewage system;

(c) lack of safe, sanitary housing;

(d) source documentation must also be provided.

(2) **Benefit to low and moderate and appropriateness** - (20 points) extent to which the CDBG application:

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender;

(b) addresses the prevention or removal of slum or blighting conditions;

(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

(3) **Leveraging** — (15 points) extent to which federal, state, and local resources, in addition to the required match, are being used by the applicant for the proposed project. The greater the leveraging, in addition to the required match, the higher the score.

(4) **Citizen participation** - (10 points) extent to which the applicant:

(a) has provided opportunities for public participation in the identification of community development needs;

(b) pledges opportunities for active citizen participation during the project, where applicable; and;

(c) pledges opportunities for active citizen participation in the implementation of the project, where applicable.

(5) **Planning** - (10 points) extent to which the applicant:

(a) (3) points: Applicant has adopted a local ~~[infrastructure capital improvement plan]~~ (ICIP), which has qualified for publication in the most recent local (ICIP) published prior to the CDBG application deadline.

(b) (3) points: The proposed project has qualified for publication in the most recent ICIP prior to the CDBG application deadline and applicant has selected CDBG as one of its possible funding sources.

(c) 1 point: Degree to which applicant's proposed project shows consistency with applicant's comprehensive plan.

(d) 1 point: Adopting a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use.

(e) 1 point: Adopting a water conservation ordinance, setting in place various methods for conserving potable water.

(f) 1 point: Implementing a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.

(6) **Feasibility/readiness** - (20 points) extent to which the project is technically and economically feasible and ready to be implemented. (examples of actions that can be taken prior to submission of the application to receive maximum points are:

- (a) acquire necessary property;
- (b) secure professional services;

(c) complete plans, specifications, or preliminary engineering report, etc.

(d) complete the environmental review process.

(7) **Cost benefit** - (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The higher the number of beneficiaries compared to the amount of funds requested, the higher the score.

(8) **User fees and revenues** - (10 points) What best demonstrates the rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility?

(a) Rates developed by asset management as presented by the New Mexico Tech, environmental finance center (EFC). (10 points)

(b) rates developed by a rate analysis, excluding asset management ~~and/or~~ or allowance for replacement of reserve funds. (5 points)

(c) rates developed by other. (1 point)

(9) **Non-funded applicants** - (10 points) - Applicants that were not funded in the prior year.

F. Planning criteria category

(1) **Consistency (25 points):** Document the degree to which the proposed planning project is consistent with the applicants current version of its comprehensive plan, its infrastructure capital improvement plan, and its planning region's consolidated plan.

(2) **Appropriateness (25 points):** Describe the impact the proposed project will have on at least one of the three national objectives of the CDBG program.

(3) **Public involvement (25 points):** Describe how the planning process will involve citizens in the preliminary identification of community needs, in the development and active participation in the planning process, and in the implementation of the plan.

(4) **Implementation strategy (25 points):** Describe the local commitment of resources to the planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.

G. Economic development rating criteria is included in Section 2.110.2.26.

H. Site visits will be conducted as needed during the application review process to verify the information presented in an application.

I. Division staff will present its ~~evaluations~~ recommendations in high, medium and low groupings to the council at least seven days prior to the allocation meeting.

J. Because emergency, economic development, and rural planning projects are received throughout the year, formal staff rating may not be necessary if all other federal and state requirements are met and other applications are not competing for funding assistance.

[2.110.2.19 NMAC - Rp 2 NMAC 110.2.19, 08-30-01; A, 08-13-04; A, 12-14-06; A, XX-XX-07]

2.110.2.20 SELECTION OF CDBG GRANTEES BY CDC

A. The council will review staff ~~evaluations and~~ recommendations and make funding decisions in an open public meeting.

B. In making its final determination, the council will consider the past performance of the applicant in administering active CDBG projects.

C. The council may adjust the scope and dollar amount of projects to bring the project within available funding, to enable the council to fund additional projects or for purposes of consistency.

D. The council will also consider ~~current conditions such as the applicant~~ the applicant's presence at the hearings, the applicant's presentation at the hearings, the council summary of the project application, and the current economic and environmental conditions.

E. The council may deviate from staff ~~rankings~~ recommendations, if the council by majority vote determines

and substantiates that any of the following conditions apply:

(1) IN ORDER NOT TO FUND A PROJECT RECOMMENDED BY STAFF - other funding sources for the project are available or minimum application requirements were not met or other applications were deemed to be a priority or the application was not well conceived.

(2) IN ORDER TO FUND A PROJECT NOT RECOMMENDED BY STAFF -

(a) the health and safety of area residents is at stake;

(b) funding committed to the project from other sources may be jeopardized;

(c) significant economic benefits will be realized if the project is implemented;

(d) the need for the project is critical.

~~[F. The council may fund the full amount requested for projects ranked in the top ten (10%) non setaside of applications received each year.~~

~~G. The council may consider funding projects ranked in the bottom thirty five (35%) of non setaside applications received each year.]~~

~~[H.] E.~~ The council will make funding determinations by a majority vote.

~~[I.] G.~~ The council may waive or adjust any state-imposed rule or requirement relative to project selection and administration of the CDBG program as long as the waiver will not result in violation of state or federal statutes or regulations or penalize other applicants.

~~[J.] H.~~ At the yearly allocation hearing, if the council sets aside amount of funding for emergency, economic development or planning, the council may at any time during the calendar year, transfer funds from the economic development, planning and emergency setasides if there is limited demand for funding in these categories. The transferred funds or any reversions from previously approved projects may be used to fund projects which were submitted for funding previously.

[2.110.2.20 NMAC - Rp 2 NMAC 110.2.20, 08-30-01; A, 08-13-04; A, XX-XX-07]

2.110.2.21 REVERSIONS, SUPPLEMENTAL FUNDING AND UNDER-RUNS

A. The purpose of this section is to provide guidance to the council, division staff, applicants, and grantees in terms of the referenced situations.

B. Decision by the council to revert funds - If, within twelve months of a CDBG award for a project by the council, the CDBG award has not resulted in a signed grant agreement between the divi-

sion and the applicant or the applicant has not made adequate progress on the project or the council determines there was fraud or misrepresentation regarding the project by the applicant, the council may vote to revert all or part of the award. The applicant shall receive written notice of the council's decision to revert all or part of award by certified mail. The applicant may appeal, in writing, the council's decision to revert all or part of the award within thirty days of receipt of the written notice of the council's decision. The appeal of the council's decision by the applicant shall be held at a council meeting no later than ninety days from the council's receipt of the written appeal. The council's decision on the appeal of the reversion shall be final. The council may grant the applicant a reasonable period of time to cure the particular default that was the basis of the reversion. At the end of the cure period, a quorum of the council shall vote again on the issue of the reversion, by telephonic conference call with the applicant, and this decision is final.

~~[B-]~~ **C.** Reversions and supplemental funding - When funds are reverted from a previously approved project grant or additional funds are made available for any other reason, the council may decide that the funds will:

- (1) be added to the emergency fund[~~;~~] or
- (2) be returned to the category of the program from which it was awarded[~~;~~] or
- (3) go into any other category[~~;~~] or
- (4) take other action as deemed appropriate.

~~[C-]~~ **D.** Underruns - On occasion, upon completion of the approved activities, a balance of funds remains after all payments have been made. This balance of funds referred to as an underrun shall be handled as follows: if the grantee has not accomplished all work called for in the original application submitted for funding consideration, the grantee may request division staff to approve the expenditure of underrun funds for a portion or all of the remaining work.

(1) if appropriate justification and sufficient funding exist, division staff may approve the request for use of underrun funds and amend the grant agreement accordingly;

(2) a negative decision may be appealed to the council.

~~[D-]~~ **E.** If the grantee proposes to undertake activities not included in the approved application, the grantee may request council approval to expend underrun funds for other eligible activities. The council may approve the request if appropriate justification and sufficient funding exist.

~~[E-]~~ **F.** If the council disapproves a request for use of an underrun, associated funds shall revert to the council for disposition.

~~[F-]~~ **G.** The processes described above for handling underruns are intended to encourage the grantee to use the most cost efficient means possible to construct projects funded by the council. Grantees shall not take advantage of this process by inflating initial funding requests. [2.110.2.21 NMAC - Rp 2 NMAC 110.2.21, 08-30-01 ; A, XX-XX-07]

2.110.2.25 MEETING PROCEDURES:

A. Special meetings. Special meetings of the council may be called by a majority of the council members or the chairman of the council, and will be held at the time and place fixed by the division.

B. Notice. Written notice stating the time, place and, if a special meeting, the purpose, will be delivered either personally, by mail, or email by the division, to each council member at least 24 hours before the scheduled date of the meeting. The council may establish dates and times for regularly scheduled meetings.

C. Quorum. A majority of the current members of the council in attendance either in person or by telephone will constitute a quorum at council meetings.

D. Record of meetings. The meeting shall be tape recorded and the division shall have the minutes made into a written record. The original of this record shall be retained by the division and a copy shall be forwarded to the council members. Copies shall be available upon request.

E. Participation methods. If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

[2.110.2.25 NMAC - Rp 2 NMAC 110.2.25, 08-30-01; 2.110.2.25 NMAC - N,A, XX-XX-07]

2.110.2.26 ECONOMIC DEVELOPMENT PROGRAM GUIDELINES: Within the context of the CDBG program and for purposes of meeting its goals and objectives, economic development can typically be defined as improving a community's economic base by using pri-

vate and public investments that provide expanded business activity, jobs, personal income and increased local revenues in a defined geographic area.

A. Goals and objectives: The state's CDBG economic development goals and objectives include:

- (1) creating or retaining jobs for low- and moderate-income persons;
- (2) preventing or eliminating slums and blight;
- (3) meeting urgent needs;
- (4) creating or retaining businesses owned by community residents;
- (5) assisting businesses that provide goods or services needed by, and affordable to low - and moderate-income residents;
- (6) providing technical assistance to promote any of the activities under ~~[26.1.1 through 26.1.5]~~ Subsection A, Paragraphs (1) through (5) above.

B. Eligible activities: CDBG eligible activities authorized under Sections 570.200, 570.201, 570.202, 570.203, 570.204, 570.482 and 570.483 of 24 CFR Part 570 of the federal rules and regulations governing the community development block grant program and directly affecting the creation or retention of employment opportunities, the majority of which are made available to low and moderate income persons, may include activities which are carried out by public, private nonprofit, or private for-profit entities when such activities are appropriate.

(1) To meet the needs and objectives of the community economic development plan, a project may include; acquisition of real property, construction, reconstruction rehabilitation, or installation of public facilities, site improvements, and utilities, and commercial or industrial buildings or structures and other commercial or industrial real property improvements and planning.

(2) Grantees and nonprofit sub-recipients may carry out for the purpose of economic development, a wide range of activities such as those listed in Section 570.203.

(3) The for-profit businesses, however, may carry out only the activities listed in that section and rehabilitation activities listed in Section 570.202.

C. Financing policies and techniques: The New Mexico CDBG program, as a development tool, can provide flexibility and take greater risks in its lending policies and financing techniques. For example, the program may:

- (1) offer a negotiated period for repayment of principal and interest;
- (2) take greater risk than banks are traditionally prepared to take, provided substantial economic development benefits will result if the loan is granted;

(3) leverage capital by reducing risk for commercial lenders and by taking a subordinate;

(4) security/collateral position;

(5) provide more favorable rates and terms than are generally available through conventional sources.

D. Project requirements:

Project requirements for eligible CDBG economic development assistance include, but are not limited to:

(1) specific employment commitments for low and moderate income residents, generally with no more than \$15,000 in CDBG funds being used for each job created or retained;

(2) at least 51% of the jobs created/retained must be held or made available to persons of low to moderate income persons;

(3) within six (6) months of completion of the project, the grantee is required to report to LGD, documentation to reflect the total number of jobs created;

(4) a firm commitment for private financial participation in carrying out the proposed project, contingent on award of CDBG funding only, must be included with the application;

(5) a minimum leveraging ratio of [2]1 new private investment dollars to 1 CDBG dollar is required, {additional leveraging will enhance a project's competitiveness};

(6) an "appropriate" determination that there is a well documented need for CDBG assistance to make the project financing feasible and that the level of assistance requested is commensurate with the public benefits expected to be derived from the economic development project;

(7) evidence of project feasibility including a business plan which contains financial statements, project pro forma (cash flow projections) and specific source and intended use of all funds or assets used in the project;

(8) generally, projects that directly assist in the relocation of a business or industry from one community to another, intrastate or interstate, will be disqualified;

(9) prior to submission of an application, applicants should thoroughly review the credit worthiness of the proposed borrower and should obtain appropriate credit reports, audited financial statements, tax returns and verify collateral.

E. Program income: The community development council has adopted a policy of strongly encouraging and, when possible, requiring applicants in the economic development category to return program income to the state for use in fostering critical economic development opportunities that occur throughout the state. By pooling program income at the

state level more of an impact can be made on the overall economic conditions of the state. The Housing and Urban Rural Recovery Act which amended the Housing and Community Development Act of 1974, provides, relative to economic development, specifically the following:

(1) states may require program income to be returned to the state but local governments must be allowed to keep program income when used for the same activity which generated the income (104(i)2);

(2) if the applicant intends to retain program income, a program income utilization plan must be submitted with the application for approval.

F. Application cycle:

Applications for economic development can be made at any time, and the division staff have thirty days to review the them.

G. Pre-application conference:

It is recommended that a preapplication conference be held prior to the submission of the final application to insure that all elements are adequately addressed. The preapplication conference will also provide an opportunity to review any new federal guidelines that may be issued which relate to economic development activities. Contact the LGD, economic development representative for information. More detailed and extensive financial and project data may be required depending on the specific project. In addition, meeting the national objective to benefit low and moderate income requires documentation certifying that the majority of the jobs go to low and moderate income persons or the majority of jobs are considered available to them. Please contact the local government division for a copy of the HUD guidelines.

H. APPLICATION

REQUIREMENTS: (These must be included along with the regular CDBG application, and should be submitted in lieu of question #2 in the regular application.)

(1) **Economic development plan:** The applicant must submit as an attachment to the application a short (5 page maximum) description of its plan for encouraging local economic development. The plan, incorporating references to the proposed project, should include a discussion of the following elements

(a) **Need** - What are the community's underlying economic problems? Need might include recent major industry shutdowns or extended layoffs, substantial increases in population without a corresponding increase in job opportunities, substantial population decreases due to lack of available or appropriate job opportunities, a lack of industrial diversification, the existence of large numbers of workers in the area with obsolete skills or skills for which there is no current demand, or other prob-

lems unique to the applicant's community.

(b) **Goals** - What is the community attempting to accomplish through its overall economic development program (not just that activity for which CDBG funding is sought)? Goals might include trying to preserve existing businesses or industries, attempting to encourage community growth, attempting to foster industrial diversification, revitalizing the central business district, or creating complementary industries which would provide jobs in the off-season for workers now only seasonally employed.

(c) **Resources** - What public and private resources, both financial and technical, does the community have available to it to help carry out its economic development program? Resources may be of a wide variety. For example, does the community have a local development corporation or similar body? Has any agency organization assigned staff member(s) to work on economic development activities for a major portion of their time? Has the financial community demonstrated its willingness to participate in development activities? Is there an adequate available labor force to meet the demands of new or expanding businesses and industries? Does the community have some unique development advantages, e.g., location, transportation facilities, industrial park or other plant sites, available raw materials, abundant power supplies, employee training capabilities, a locally-administered revolving loan fund to assist growing businesses or industries, technical assistance programs to help business persons deal with marketing, management, or financial planning problems.

(d) **Strategy** - What strategy is the community using to pursue its economic development goals? Strategy might include a description of the specific activities that have been identified as components of the community's strategy for encouraging local economic development. For example, which has been assigned first, second, and third priority? How much will each cost? What funding sources have been identified for each? What can or will the local government do to support those activities?

(e) **Results** - What actions has the community already undertaken to implement its economic development plan? What sources of funding were used? What were the results? Results might include a discussion of actions the community has taken to encourage development. For example, has it offered property tax reductions to new or expanding industries? Has it formed a local development corporation or prepared industrial or tourism promotion packages? What results have been achieved? How many new jobs have been

created or existing jobs retained? How many new firms have begun operations in the community? How many existing firms have undertaken expansion activities?

(2) Hiring and training plan:

(a) Applicants must establish procedures for the project to ensure preferential recruitment, hiring, and training of local workers, particularly those of low and moderate income.

(b) In the event of a grant award, the applicant's commitment to the hiring plan will be considered binding and will be incorporated by reference in the grant agreement between the local governing body and the local government division.

(3) Private sector commitments:

(a) Applicants must provide evidence of firm commitments of financial resources from the private sector.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds.

(c) Investments made or costs incurred prior to the grant application are not eligible for use as matching funds or leverage but should be referenced as related to the total project, if applicable.

(4) Public sector commitments:

(a) If public sector resources are to be involved in the proposed economic development project, applicants must demonstrate evidence of a firm commitment of public funds ~~and~~ or other resources.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds to the project.

(c) Evidence may include resolutions or ordinances passed by the local governing body and other appropriate local groups.

(5) Use of CDBG funds for economic development loans (if applicable):

(a) Any project that includes a loan should provide an explanation of the proposed interest rate, terms and rationale for the proposed financing structure.

(b) Any loan made by a local governing body with CDBG funds as a part of an approved CDBG economic development project must be adequately secured.

(c) Subordinated loans may be made when justifiable and appropriate.

(d) The applicant must include a detailed description of the proposed use of program income. (principal and interest). Applicants are encouraged to designate program income to be returned to the state for future economic development set-aside-eligible activities.

(6) Viability of assisted enterprises: Any for-profit entity to be assisted with CDBG funds must document that with-

out participation of CDBG funds the proposed activity would not be feasible and that after receipt of CDBG assistance the enterprise will be viable and self-sustaining. All applicants proposing an economic development activity shall submit the following for any entity to be assisted with CDBG funds.

(a) a business plan which consists of at least a description of the history of the firm, background, and experience of the principals, organizational structure, a description of its major products or services, market area and market share, goals, and planned expansions or changes in operations; the plan should also describe the impact the CDBG project, if funded, would have on the firm's activities;

(b) a three-year to five-year operating plan forecast (profit and loss projection); applicants may use U.S. small business administration (SBA) forms or equivalent;

(c) a monthly cash flow analysis, SBA forms or equivalent.

(d) for any existing business, the two most recent year-end financial statements, including an income statement and balance sheet.

I. RATING CRITERIA:

The selection criteria in the rating and ranking system will give priority to projects which firmly demonstrate the following: need, appropriateness, impact, and benefit to low and moderate income persons. These factors are discussed below and are intended to provide additional information. Since each application will be a unique response to particular community-specific needs, there are no "right" or "wrong" activities or solutions. The ranking of "appropriateness" (and later, of "impact") will necessarily be in part subjective, with the division taking into account not only how well each applicant addresses the problems it has defined, but also how its problems and responses compare with those of other applicants. Responses may vary considerably depending upon the size and location of the community and the type of project proposed.

(1) NEED - (200 points) - In analyzing an applicant's need for a project, the division will use statistical information provided by the New Mexico department of labor and the U.S. bureau of the census which is uniformly available for all thirty-three (33) counties. Since similar data is not accumulated at the municipal level, cities and towns will be scored with the figures for the county in which they are located. The three factors which will be considered are: the average number of unemployed persons in the county during the last calendar year; the percent of unemployment (average) in the county during the last calendar year; long-term unemployment (measured by average unemployment

rates in the county for the last five calendar years).

(a) The data will be calculated and each applicant assigned a relative score.

(b) The division will consider assigning a different score in exceptional cases, where an applicant can conclusively demonstrate that the first two factors used to measure economic need are not reflective of local economic conditions (such as major recent plant closings) and the situation is substantiated by the New Mexico department of labor. A request for consideration of local economic data must be submitted with the CDBG application. The applicant should identify sources of data and define methodologies.

(2) APPROPRIATENESS - (200 points) - Two major factors will be weighted in this ranking category: the soundness of the applicant's economic development plan and the related project for which CDBG funding is sought; the strength of the applicant's hiring and training plan for ensuring that local residents, particularly those of low and moderate income, will be hired to fill the stated number of jobs created or retained as a result of CDBG-funded activities. These two factors will be ranked as follows:

(a) Plan and program - (140 points) - Some factors which might contribute to the achievement of an "outstanding" score are:

(i) that the applicant has developed a complete, well reasoned, appropriate, and achievable plan for dealing with its total economic development needs, taking into consideration all available public and private resources and local capacity;

(ii) that the local governing body has officially adopted the economic development plan as a matter of public policy;

(iii) that the proposed project for which CDBG funding is sought is an integral part of that plan; (it need not be the first priority item identified in the overall plan if other, more appropriate, resources are available and already being used to meet higher priority items);

(iv) that the applicant has made substantial local efforts to deal with its economic development problems;

(v) that the proposed CDBG project is realistic and workable, and the job savings or creation expected to result from its implementation will occur within a reasonable time following the date of grant award;

(vi) that if income is to be generated by CDBG-funded activities, and retained locally, a plan for the use of that money has been developed and submitted with the application; this plan must include mechanisms established for administration of the funds, (if a revolving loan

fund is to be established with program income, procedures must be outlined covering local application processing, time frames, approval, negotiation, pricing, packaging, servicing, etc.);

(vii) that there has been active citizen participation in the development of the economic development plan and in the selection of the CDBG project.

(b) **Hiring and training plan** - (60 points) - Since a primary goal of CDBG-funded economic development grants is to increase job opportunities for local residents, particularly persons of low and moderate income, it is essential that applicants take every measure to bring about that result. Each applicant must include in its application an employment and training plan to be used in filling jobs created or saved as a result of CDBG activities. Factors which would most likely contribute to the achievement of a high score are:

(i) that the applicant's employment and training plan provides clear, complete procedures for outreach, recruitment, screening, selection, training, and placement of workers which will ensure maximum access of local residents, particularly persons of low and moderate income, to jobs created or saved by the project;

(ii) that attention has been given to necessary supportive services for trainees needing them;

(iii) that a complete training curriculum has been developed and all training resources identified;

(iv) that responsibility has been assigned for all phases of the training program;

(v) that a written agreement to follow the plan has been obtained from each firm expected to benefit directly from the program.

(3) **IMPACT** - (200 points) - In weighing the anticipated impact of the applicant's proposed CDBG grant activities on the community's identified problems, the following four factors will be considered and evaluated:

(a) **Leverage** - (50 points) - In preparing its proposed project budget, the applicant is required to identify all sources of funds to be used and the amounts to be contributed by each. To be eligible for consideration, an applicant must provide at least ~~two~~one private non-CDBG dollars for each dollar of CDBG funds requested (a ~~2:1~~ 1:1 ratio). The non-CDBG funds may come from a variety of private sources, such as new investment by a firm to be assisted, bank loans, or local development corporation loans and debentures. Applicants will be ranked against each other. If, for instance, community A has the highest

leverage ratio (~~2:1~~ 1:1 of non-CDBG funds for each \$1 of CDBG funds, a 6:1 ratio) and community B has a ~~2:1~~ 1:1 leverage, community A would receive the maximum score and community B and all other applicants would be relatively scored against community.

(b) **CDBG dollars per job** - (50 points) - The applicant is required to specify the number of permanent full-time jobs to be created or retained as a result of the requested CDBG program. In determining an applicant's score in this category, the total CDBG funds to be used (exclusive of administrative funds) will be divided by the total number of full-time jobs expected to result. NOTE: In evaluating an applicant's job creation projections, the local government division will consider the historical relationships of sales, space, and machines to jobs. It will also look at typical ratios for the industry of which the firm to be assisted is a part. Applicants should be prepared to justify job creation claims which substantially exceed industry norms or \$15,000 per job created or retained.

(c) **Type of jobs** - (50 points) - Although all new or retained jobs provide some measure of economic benefit to the community, full-time, skilled or semi-skilled positions are more desirable for most workers than part-time jobs or those requiring unskilled labor. One objective of CDBG economic development activities is to foster the creation and retention of permanent, full-time employment with growth potential for persons of low and moderate income, which offers those workers an opportunity for advancement in a firm or industry. Applicants are required to indicate the percentage of jobs to be created or retained which are full-time or part-time, skilled, semi skilled, or unskilled.

(d) **Overall economic impact** - (50 points) - The applicant must discuss both the direct and indirect effects the CDBG program is expected to have on the community's economy. Some of the factors which will be considered in evaluating impact are:

(i) the size of the additional payroll expected to be generated for the jobs created or retained by the program;

(ii) the total number of jobs to be created or retained;

(iii) whether the firm to be assisted is a primary industry (producing goods or services mainly to be sold outside the area or state, thereby importing dollars into the community and state);

(iv) whether local property tax revenues will be significantly increased as a result of the proposed business start-up, expansion, retention, etc.;

(v) the applicant

demonstrating the greatest positive impact will be scored highest; all other applicants will be ranked correspondingly;

(vi) when applications have been scored in all four categories (leverage, dollars per job, types of jobs, and overall economic impact), those scores will be totaled.

(4) **BENEFIT TO LOW AND MODERATE INCOME PERSONS** - (200 points)

(a) This ranking criterion assesses the extent to which persons of low and moderate income will directly benefit from the expenditure of CDBG grant funds. To determine this score, the number of jobs to be created or retained and made available to low and moderate income persons will be divided by the total number of jobs to be created or retained as a result of the CDBG program.

(b) The highest score will receive up to a maximum of 200 points and all other applicants will be scored accordingly.

(c) To be eligible for consideration a project must demonstrate that it will benefit principally persons of low and moderate income.

[2.110.2.26 NMAC - Rp 2 NMAC 110.2.26, 08-30-01; A, 12-14-06; A; XX-XX-07]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

NOTICE OF PUBLIC HEARING

The Department proposes to amend language in NMAC parts 8.150.120.8, 8.150.500.8, 8.150.500.10 and 8.150.620.9 to make federally required adjustments, simplify application processes and clarify policy. The Department proposed to update the Department's web site address in 8.150.620.11 and proposes to add a new part to Chapter 150 Title 8 at 8.150.620 titled the Gasoline and Home Heating Fund.

In addition to proposed regulations, this Human Services Register requests public comments on the annual LIHEAP State Plan. Each year, the LIHEAP State Plan is submitted to the Federal administering agency, the Department of Health and Human Services (DHHS). The LIHEAP State Plan has been amended to reflect the administration of the LIHEAP program in Federal Fiscal Year (FFY) 2008 and to make required adjustments to the LIHEAP Federal poverty guidelines (FPG) as required by federal statute.

The Department proposes to administer the LIHEAP program in FFY 2008 using the most recently issued FPG. The Department proposes to amend 8.150.102.8 to allow flexibility in conducting LIHEAP eligibility interviews. The Department proposes to amend 8.150.500 Section 8 and Section 10 to allow the use of current, non-questionable verified income that is being used to determine eligibility for other Department public assistance programs. The Department proposes to amend 8.150.620 Section 9 to clarify policy regarding Energy Cost Points and Section 11 to update the Department's web site address. The Department proposes to add part 8.150.610 titled the Gasoline and Home Heating Fund to clarify the use of State General Fund (GF) for the purposes of the LIHEAP program. This new section clarifies that when not specified in State Legislation, any GF for the LIHEAP program will be determined by the Secretary of the Department. Part 8.150.610 will also contain definitions and responsibilities related to the winter utility company disconnect moratorium. The changes that are proposed in policy will be incorporated into the FFY 2008 LIHEAP State Plan. The current LIHEAP State Plan can be viewed on the HSD website at <http://www.hsd.state.nm.us/isd/ISDPlans.html>. The current and proposed regulations can be viewed on the internet at <http://www.nmcpr.state.nm.us/nmac/title0>

[8/T08C150.htm](http://www.hsd.state.nm.us/isd/ISDPlans.html).

Individuals wishing to request a copy of the current and proposed rule changes and/or the current and the proposed LIHEAP State Plan should contact the Income Support Division, Work and Family Support Bureau, P O Box 2348, Santa Fe, New Mexico 87504-2348, or by calling 1-800- 648-7167.

The Department proposes to implement these regulations effective October 1, 2007.

A public hearing to receive testimony on these proposed regulations will be held September 5, 2007 at 10:00 AM. The hearing will be held in the Law Library at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 57505. Parking accessible to persons with physical impairments will be available.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program, or service, please contact the NM Human Services Department toll free at 1 800 432 6217 or through the Relay New Mexico system, toll free at 1 800 659 8331. The Department requests at least ten-day advance notice to provide requested alternative formats and special accommodations.

Interested persons may address written or recorded comments to: Pamela S. Hyde, J.D., Secretary Human Services Department P.O. Box 2348 Santa Fe, New Mexico 87504-2348

Interested parties may also address comments by electronic mail to: loretta.williams@state.nm.us These comments must be received no later than 5:00 P.M., on September 5, 2007. Written and recorded comments will be given the same consideration as oral comments made at the public hearing.

Publication of these proposed regulations approved by:
PAMELA S. HYDE, J.D., SECRETARY
HUMAN SERVICES DEPARTMENT
New Mexico Human Services Register Vol. 30, No. 19 July 16, 2007

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider adopting revised rules in the Cash Assistance Program. The hearing will be held at 1:00 pm on August 30, 2007. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The 48th New Mexico Legislative Session of 2007 amended part of the NMW Act via House Bill 342 and House Bill 140; both signed into law on April 4, 2007. The U.S. Department of Health and Human Services implemented additional revisions to the regulations for the TANF Program.

The proposed regulations intend to clarify new procedural guidelines for several areas of the TANF program to include: expansion of the eligibility criteria for diversion payments and diversion payment amounts; incorporate Education Works Program objectives into the TANF objectives; re-define the allowable timeframe for verifications to determine prospective budgeting; and detail the work program and Child Support Enforcement Division sanction processes.

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

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to:

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

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

NEW MEXICO MEDICAL BOARD

NEW MEXICO MEDICAL BOARD

Notice

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, August 16, 2007 at 8:00 a.m. and Friday, August 17, 2007 at 8:30 a.m. in the Conference Room, 2055 S. Pacheco, Building 400, Santa Fe, New Mexico. A Public Rule Hearing will be held on Thursday, August 16, 2007 at 1:00 p.m. The Board will reconvene after the Hearing to take action on the proposed rules. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.2 NMAC (Physicians: Licensure Requirements), 16.10.3 NMAC (Examinations), 16.10.4 (Continuing Medical Education), 16.10.7 (License Expiration, Renewal, and Reinstatement), 16.10.8 NMAC (Medical Ethics), 16.10.9 NMAC (Fees), and 16.10.15 NMAC (Physician Assistants: Licensure and Practice Requirements).

Changes to Parts 2, 4, 7, 8 and 9 will provide further clarification of background checks, continuing medical education, definitions and fees. Changes to Part 3 will provide further clarification and expansion of examination requirements. Changes to Part 15 will further define the scope of practice and supervision of physician assistants.

Copies of the proposed rules will be available on July 16th on request from the Board office at the address listed above, by phone (505) 476-7220, or on the Internet at www.nmmb@state.nm.us.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., August 10, 2007, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact Lynnelle Tipton, Administrative Assistant at 2055 S. Pacheco, Building 400, Santa Fe, NM at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats.

NEW MEXICO BOARD OF OSTEOPATHIC MEDICAL EXAMINERS

Legal Notice

Notice is hereby given that the New Mexico Board of Osteopathic Medical Examiners will convene a Rule Hearing to renumber, amend and to conform to the current NMAC requirements:

Title 16, Chapter 17, Part 1	General Provisions
Title 16, Chapter 17, Part 2	Application for Licensure
Title 16, Chapter 17, Part 3	Licensure Procedure
Title 16, Chapter 17, Part 4	Renewal Procedure\
Title 16, Chapter 17, Part 5	[Reserved]
Title 16, Chapter 17, Part 6	Revocation or Refusal of Licensure
Title 16, Chapter 17, Part 7	Reinstatement

Title 16, Chapter 18, Part 1	General Provisions
Title 16, Chapter 18, Part 2	Application Procedure Rule
Title 16, Chapter 18, Part 3	Renewal of Certification Rule
Title 16, Chapter 18, Part 4	Change of Employment Registration
Title 16, Chapter 18, Part 5	[Reserved]
Title 16, Chapter 18, Part 6	Supervision of Physician Assistants
Title 16, Chapter 18, Part 7	Prescribing and Distribution of Controlled Substances
Title 16, Chapter 18, Part 8	[Reserved]
Title 16, Chapter 18, Part 9	Student Physician Assistants

This Hearing will be held at the Toney Anaya Building, 2250 Cerrillos Road, Regulation and Licensing Conference Room, Santa Fe, NM, Saturday, August 31, 2007 at 10:00 a.m.

Following the Rule Hearing the New Mexico Board of Osteopathic Medical Examiners will convene a regular meeting on August 31, 2007. beginning with Executive Session. The public portion of the meeting is anticipated to begin about 11:00 a.m.

Copies of the proposed rules will be available August 15, 2007 on request from the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or phone (505) 476-4604.

Anyone wishing to present their views on the proposed rules may appear in person at

the Hearing, or may send written comments to the Board office. Written comments must be received by August 13, 2007 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide 14 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the committee and Board meeting may be closed to the public while the Board and Committee are in Executive Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board Administrator at least one week prior to the meeting.

NEW MEXICO BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **August 27th & 28th, 2007** at 9:00 a.m. in the **Ruidoso Convention Center, 111 Sierra Blanca Dr. Ruidoso, New Mexico** for the purpose of conducting a regular Board meeting.

Interested persons may contact Debra Wilhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9830 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us to receive copies of the agenda, which will be available August 16, 2007. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

The agenda (tentative) will be available starting August 16, 2007, through the Board's website: www.rld.state.nm.us/pharmacy.

The Board will notice the following for rule hearings:

16.19.6 NMAC - Pharmacies

The Board will address:

Approval of Applications:

Other Board Matters Including Public Requests:

*Executive Director's Report:

Case presentations*

Bill Weast:	2007-012	2007-013
	2007-021	2007-026
	2007-027	2007-057
Ben Kesner:	2007-043	2007-059
	2007-060	

Published in the Albuquerque Journal and Tribune - July 20, 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION

INSURANCE DIVISION

BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE

IN THE MATTER OF

THE 2007 ANNUAL TITLE INSURANCE HEARING

DOCKET NO. 07-00279-IN

NOTICE OF HEARING TO CONSIDER

THE PROMULGATION OF PREMIUM RATES AND PROCEDURAL ORDER

THIS MATTER comes before the New Mexico Superintendent of Insurance ("Superintendent") upon the Superintendent's own motion, pursuant to the statutory mandate of section 59A-30-8 (A) NMSA 1978, requiring the Superintendent to hold an annual hearing during November of each calendar year to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent. The Superintendent, being fully advised in the premises, hereby issues the following notice and order:

1. A public hearing shall be held commencing on **Friday, November 16, 2007 at 9:30 a.m.**, and continuing thereafter as necessary in the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. The hearing shall be held for the purpose of considering title insurance rates. The proceeding shall be a formal administrative hearing within the meaning of section 59A-4-17 NMSA 1978. Certain provisions of the Administrative Procedures Act, specifically sections 12-8-10 through 12-8-13 NMSA 1978 and section 12-8-15 NMSA 1978 shall apply to the proceeding.

2. Pursuant to section 59A-30-6 (C) NMSA 1978, title insurance rates shall not be excessive, inadequate or unfairly discriminatory, and shall contain an allowance permitting a profit which is not unreasonable in relation to the riskiness of the business of title insurance.

3. Any person intending to file a rate proposal or otherwise participate as a party to this proceeding shall file a motion for leave to intervene on or before **Friday, August 24, 2007**. Objections to motions for leave to intervene shall be filed on or before **Friday, August 31, 2007**.

4. Techniques of pre-hearing discovery permitted in civil actions in New Mexico, such as interrogatories, depositions, and requests for production of documents, may be employed by Staff or any party commencing on or after **Friday, September 14, 2007**. The time in which to respond to interrogatories and requests for production of documents shall be shortened to 10 calendar days after service.

5. Staff of the Insurance Division Title Insurance Bureau ("Staff") and all other persons who have been granted leave to intervene ("parties") who wish to submit independent written rate proposal(s) and actuarial reports(s) relating to the rate proposals(s) shall file such proposal(s) and report(s) in this docket on or before **Friday, October 19, 2007**.

6. Staff and all parties shall file the following items in this docket on or before **Friday, October 19, 2007**:

a) Notice of Intent to Call Expert Witnesses, which shall include the name, address, and business association of each expert witness;

b) Witness List, which shall include addresses and telephone numbers for each witness named; and

c) Pre-filed Direct Testimony and copies of related exhibits for each lay witness and for each expert witness.

7. All lay witnesses and all expert witnesses shall file pre-filed direct testimony, appear at the hearing and submit to examination under oath.

8. Staff and all parties shall file the following items in this docket on or before **Friday, November 2, 2007**:

a) Pre-filed Rebuttal Testimony and copies of related exhibits; and

b) Objections to Pre-filed Direct Testimony and exhibits.

9. Staff and all parties shall file Objections to Pre-filed Rebuttal Testimony and exhibits in this docket on or before **Wednesday, November 7, 2007**:

10. Staff and all parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing, stipulations regarding undisputed material facts and admissibility of all uncontested documents, and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding the promulgation of premium rates and any stipulations reached by the parties on or before **Wednesday, November 7, 2007**.

11. No discovery requests or notices of taking deposition shall be served after **Wednesday, November 7, 2007**.

12. A pre-hearing conference shall be held on **Wednesday, November 7, 2007, at 9:30 a.m.** at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions and other outstanding matters related to the hearing, and to set the agenda for the hearing.

13. An original and two copies of all proposals, reports, comments, motions, notices and other materials to be filed shall be submitted in person or by mail to the Public Regulation Commission's Docketing Office, citing the above-referenced docket. The Docketing Office is located in Room 406, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico and its mailing address is P.O. Box 1269, Santa Fe, New Mexico 87504-1269. An additional copy of all proposals, reports, comments, motions, notices and other materials filed in this docket shall be delivered or mailed to Charles G. Denton, Title Insurance Bureau Chief, Insurance Division, Room 431, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

14. All submissions shall be deemed filed as of the date and time stamped by the Docketing Office.

15. Staff shall arrange for distribution and publication of this notice pursuant to section 59A-4-16 NMSA 1978 and other applicable law.

16. Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, should contact Bettie Cordova at (505) 827-4526 no later than **Monday, November 12, 2007**. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Bettie Cordova if a summary or other type of accessible form is needed.

DONE AND ORDERED this 9th day of June 2007.

/s/

Morris J. Chavez
Superintendent of Insurance

NEW MEXICO PUBLIC REGULATION COMMISSION

INSURANCE DIVISION

BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE

**IN THE MATTER OF
THE 2007 ANNUAL TITLE
INSURANCE HEARING**

DOCKET NO. 07-00279-IN

NOTICE OF HEARING TO ADDRESS MATTERS RELATED TO THE REGULATION OF TITLE INSURANCE OTHER THAN THE PROMULGATION OF PREMIUM RATES AND PROCEDURAL ORDER

THIS MATTER comes before the New Mexico Superintendent of Insurance ("Superintendent") upon the Superintendent's own motion, pursuant to the statutory mandate of section 59A-30-8 (A) NMSA 1978, requiring the Superintendent to hold an annual hearing during November of each calendar year to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the Superintendent. The Superintendent, being fully advised in the premises, hereby issues the following notice and order:

1. A public hearing shall be held on **Thursday, November 15, 2007, at 9:30 a.m.** and continuing thereafter as necessary in the Public Regulation Commission Hearing Room, First Floor, Marian Hall, 224 East Palace Avenue, Santa Fe, New Mexico. The hearing shall be held for the purpose of adopting and/or amending regulations and forms, for determining the Insurance Fraud Fund assessment for title insurers pursuant to section 59A-16C-14 NMSA 1978 and for addressing other matters related to the business of title insurance. The proceeding shall be informal within the meaning of section 59A-4-18 NMSA 1978.

2. Staff of the Insurance Division ("Staff") and all other persons wishing to submit proposals relating to adopting and/or amending regulations and forms, determining the insurance fraud fund assessment for title insurers pursuant to section 59A-16C-14 NMSA 1978 and other matters related to the business of title insurance shall file the following items in this docket on or before **Friday, October 12, 2007**:

a) written proposal(s) and an electronic word document version of each proposal. The electronic versions may be filed in the docket on a diskette or e-mailed to Charles.Denton@state.nm.us.; and

b) written comments and exhibits in support of their proposal(s). All written comments shall state and discuss the particular reasons for the proposal and where necessary or appropriate to effectuate the proposal, shall include specific language to implement the proposal.

3. All interested persons may testify at the hearing.

4. Written comments on proposals filed in this docket shall be filed on or before **Friday, October 26, 2007**.

5. All written comments suggesting changes to proposals shall state and discuss the particular reasons for the suggested changes and, where necessary or appropriate to effectuate the changes being suggested, shall include specific language for incorporation into the proposal.

6. The parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding regulation of title insurance other than promulgation of premium rates on or before **Wednesday, November 7, 2007**.

7. A pre-hearing conference shall be held on **Wednesday, November 7, 2007, at 9:30**

a.m. at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions related to the hearing, and to set the agenda for the hearing.

8. Proposals and comments will be available for public inspection during regular business hours at the Public Regulation Commission's docketing office. An original and two copies of all proposals, reports, comments, motions, notices and other materials to be filed shall be submitted in person or by mail to the docketing office, citing the above-referenced docket. The docketing office is located in Room 406, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico and its mailing address is P.O. Box 1269, Santa Fe, New Mexico 87504-1269. An additional copy of all proposals, reports, comments, motions, notices and other materials filed in this docket shall be delivered or mailed to Charles G. Denton, Title Insurance Bureau Chief, Insurance Division, Room 431, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

9. All submissions shall be deemed filed as of the date and time stamped by the docketing office.

10. Staff shall arrange for distribution and publication of this notice pursuant to section 59A-4-16 NMSA 1978 and other applicable law.

11. Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, should contact Bettie Cordova at (505) 827-4526 no later than November 12, 2007. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Bettie Cordova if a summary or other type of accessible form is needed.

12. Interested persons should contact the Docketing Office or Staff for confirmation of the hearing date, time and place since hearings are rescheduled on occasion.

DONE AND ORDERED this 9th day of June 2007.

/s/

Morris J. Chavez
Superintendent of Insurance

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

STATE OF NEW MEXICO
PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

IN THE MATTER OF ADOPTING **DOCKET NO. 07-00280-IN**
13.9.17 NMAC, MILITARY SALES
PRACTICES

NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER

NOTICE IS HEREBY GIVEN that the New Mexico Superintendent of Insurance ("Superintendent") proposes to adopt 13.9.17 NMAC, Military Sales Practices. The Superintendent, being fully advised, **FINDS** and **CONCLUDES**:

1. The Superintendent is proposing adoption of the National Association of Insurance Commissioners' Military Sales Practices Model Regulation with modifications to protect military personnel on military bases in New Mexico from abusive life insurance and annuity sales practices.

2. Copies of the proposal are available as follows:

a. by downloading from the Public Regulation Commission's website, www.nmprc.state.nm.us, under Proposed Rules, Insurance: Docket No. 07-00280-IN - Adopting 13.9.17 NMAC, Military Sales Practices;

b. by sending a written request with the docket number, rule names, and rule numbers to the Public Regulation Commission's Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of copying; or

c. for inspection and copying during regular business hours in the Public Regulation Commission's Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

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

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

IT IS FURTHER ORDERED that an informal public hearing pursuant to Section 59A-4-18 NMSA 1978 be held on **Wednesday, August 29, 2007** at 9:30 a.m. in the Public Regulation Commission, Fourth Floor Hearing Room, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposal. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposal on or before **Monday, August 20, 2007**. An original and two copies of written comments must be filed with the Public Regulation Commission's Docketing Office, Room 406, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also e-mail a copy of written comments in Microsoft Word format to michael.batte@state.nm.us. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

IT IS FURTHER ORDERED that the Superintendent may require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary

to provide for a fuller record and a more efficient proceeding.

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

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

PLEASE BE ADVISED THAT individuals with a disability, who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Bettie Cordova at (505) 827-4526. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Cordova.

DONE, this 10th day of July 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

MORRIS J. CHAVEZ, Superintendent of Insurance

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES
DIVISION
of the**

Regulation and Licensing Department

NOTICE OF PUBLIC HEARING

Public Hearings will be held to receive comments on proposed amendments to the following rules:

- * 14.9.5 NMAC - 2006 Mechanical Codes - Medical Gas Installation and Certification
- * 14.5.1 NMAC - Construction Industries General Provisions
- * 14.5.2 NMAC - Permits
- * 14.5.5 NMAC - Fees

In general, these amendments will facilitate the adoption of the new 2006 construction, plumbing and mechanical codes and may also make technical corrections respecting grammar, formatting and internal consistency.

Public Hearings will take place on **Friday, August 31, 2007, from 9:00 a.m. through 12:00 noon**, at the following locations:

- * **Santa Fe, NM** - CID Conference Room, 2550 Cerrillos Road, 3rd Floor, Santa Fe
- * **Albuquerque, NM** - Regulation and Licensing Conference Room, 5200 Oakland Avenue, NE, Albuquerque
- * **Las Cruces, NM** - CID Conference Room, 505 S. Main, Suite 150, Las Cruces
- * **Farmington, NM** - Civic Center, 200 W. Arrington, Farmington
- * **Roswell, NM** - City Council Chambers, 425 North Richardson, Roswell

You are invited to attend and express your opinion on the adoption of the above-referenced proposed rules. If you cannot attend the meeting, you may send your written comments to the General Construction Bureau, Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 476-4700. FAX (505) 476-4685. All comments must be received no later than 5:00

p.m., August 31, 2007.

Copies of the draft rules will be available at the Construction Industries Division Offices and on the CID web site, <http://www.rld.state.nm.us/CID/index.htm>, beginning July 2, 2007.

If you require special accommodations, please notify the Division of such needs no later than August 15, 2007.

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
MANUFACTURED HOUSING
DIVISION**

**State Of New Mexico
Regulation and Licensing Department
Manufactured Housing Division**

**CANCELLATION OF THE
LEGAL NOTICE
NOTIFICATION OF PUBLIC
HEARING
RULEMAKING**

Manufactured Housing Committee

The Manufactured Housing Committee has scheduled a Public Hearing for July 20, 2007. The purpose of this hearing will be to receive public comment on a proposed change to the Manufactured Housing Rules and Regulations, Section 14.12.2.59 New Mexico Administrative Code (NMAC). The specific proposed changes to these sections are outlined below.

The Hearing will be held at the Regulation and Licensing Department, located at 2550 Cerrillos Road, Santa Fe, New Mexico 87505, Toney Anaya Building, 2nd Floor, Hearing Room 1, at 10:00 a.m. The hearing will be conducted by Hearing Officer Sondra Frank

The specific proposed rule change reads as follows:

14.12.2.59: LOCAL PLANNING, AND ZONING JURISDICTIONS OR UNITS INSTALLED IN FLOODPLAIN OR MUDSLIDE AREAS:

B. Every dealer prior to delivery of a manufactured home sold, shall have a written statement from [acknowledged by the consumer a document advising the consumer to check with] the local governing body in the locality of the site where the home will be installed that either the home is not in a flood zone, or a floodplain use permit that gives the conditions that must be met to install the home [to deter-

~~mine installation requirements]~~ in flood zone areas.

[14.12.2.59 NMAC - Rp, 14 NMAC 12.2.52, 9-14-00]

In addition to receiving public comment at the July 20, 2007 public hearing, the Manufactured Housing Committee will receive written comments between the time period of July 1, 2007 and July 20, 2007. Written comments should be mailed, or delivered to, the Manufactured Housing Division of the Regulation and Licensing Department, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico, 87505. Written comments may also be faxed to (505) 476-4856.

Pursuant to the Americans with Disabilities Act, participants with special needs should contact the Manufactured Housing Division no later than July 18, 2006.

Benito J. Martinez, Jr., MHD Director
Manufactured Housing Division
2550 Cerrillos Road
P.O. Box 25101
Santa Fe, New Mexico 87505
(505) 476-4775

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
MANUFACTURED HOUSING
DIVISION**

**State Of New Mexico
Regulation and Licensing Department
Manufactured Housing Division**

**LEGAL NOTICE
NOTIFICATION OF PUBLIC
HEARING
RULEMAKING
Manufactured Housing Committee**

The Manufactured Housing Committee has scheduled a Public Hearing for August 28, 2007. The purpose of this hearing will be to receive public comment on a proposed change to the Manufactured Housing Rules and Regulations, Section 14.12.2.59 New Mexico Administrative Code (NMAC). The specific proposed changes to these sections are outlined below.

The Hearing will be held at the Regulation and Licensing Department, located at 2550 Cerrillos Road, Santa Fe, New Mexico 87505, Toney Anaya Building, 2nd Floor, Hearing Room 1, at 9:00 a.m. – 10:30 p.m. The hearing will be conducted by the Manufactured Housing Committee.

The specific proposed rule change reads as

follows:

14.12.2.59: LOCAL PLANNING, AND ZONING JURISDICTIONS OR UNITS INSTALLED IN FLOODPLAIN OR MUDSLIDE AREAS:

B. Every dealer prior to delivery of a manufactured home sold, shall have a written statement from ~~acknowledged by the consumer a document advising the consumer to check with~~ the local governing body in the locality of the site where the home will be installed that either the home is not in a flood zone, or a floodplain use permit that gives the conditions that must be met to install the home ~~[to determine installation requirements]~~ in flood zone areas.

[14.12.2.59 NMAC - Rp, 14 NMAC 12.2.52, 9-14-00]

In addition to receiving public comment at the August 28, 2007 public hearing, the Manufactured Housing Committee will receive written comments between the time period of July 16, 2007 and August 28, 2007. Written comments should be mailed, or delivered to, the Manufactured Housing Division of the Regulation and Licensing Department, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico, 87505. Written comments may also be faxed to (505) 476-4856.

Pursuant to the Americans with Disabilities Act, participants with special needs should contact the Manufactured Housing Division no later than August 24, 2007.

Benito J. Martinez, Jr., MHD Director
Manufactured Housing Division
2550 Cerrillos Road
P.O. Box 25101
Santa Fe, New Mexico 87505
(505) 476-4775

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

8.14.13 NMAC, Regional Juvenile Services Grant Fund, filed July 18, 2006 is repealed and replaced by 8.14.13 NMAC, Juvenile Continuum Grant Fund, effective July 31, 2007.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

TITLE 8 SOCIAL SERVICES CHAPTER 14 JUVENILE JUSTICE PART 13 JUVENILE CON- TINUUM GRANT FUND

8.14.13.1 ISSUING AGENCY:
New Mexico Children, Youth and Families Department.
[8.14.13.1 NMAC - Rp, 8.14.13.1 NMAC, 07/31/2007]

8.14.13.2 SCOPE: General public, all units of local and tribal government, and all partners in juvenile justice continuums that may be seeking to provide cost effective services and certain temporary nonsecure alternatives to detention for juveniles arrested or referred to juvenile probation and parole or at risk of such referral.
[8.14.13.2 NMAC - Rp, 8.14.13.2 NMAC, 07/31/2007]

8.14.13.3 STATUTORY AUTHORITY: Juvenile Continuum Act, Laws 2007, Chapter 351 and the Children, Youth and Families Department Act, Section 9-2A-7(D) NMSA 1978, as amended.
[8.14.13.3 NMAC - Rp, 8.14.13.3 NMAC, 07/31/2007]

8.14.13.4 DURATION: Permanent.
[8.14.13.4 NMAC - Rp, 8.14.13.4 NMAC, 07/31/2007]

8.14.13.5 EFFECTIVE DATE:
July 31, 2007, unless a later date is cited at the end of a section.
[8.14.13.5 NMAC - Rp, 8.14.13.5 NMAC, 07/31/2007]

8.14.13.6 OBJECTIVE: The objective of Chapter 14, Part 13 is to establish the manner in which money appropriated by the New Mexico state legislature to the juvenile continuum grant fund, and

other money accruing to the fund as a result of gift or deposit, shall be awarded pursuant to the Juvenile Continuum Act, Laws 2007, Chapter 351.

[8.14.13.6 NMAC - Rp, 8.14.13.6 NMAC, 07/31/2007]

8.14.13.7 DEFINITIONS:

A. "Department" means the children, youth and families department.

B. "Grant fund" means the juvenile continuum grant fund, established pursuant to the Juvenile Continuum Act, Laws 2007, Chapter 351.

C. "JJAC" means the juvenile justice advisory committee, formed and functioning pursuant to Sections 9-2A-14 through 9-2A-16 NMSA 1978, as amended.

D. "Procurement Code" means the Procurement Code, Sections 13-1-21 to 13-1-199 NMSA 1978, as amended.

E. "Juvenile justice continuum" means a system of services and sanctions for juveniles arrested or referred to juvenile probation and parole or at risk of such referral and consists of a formal partnership among one or more units of local or tribal governments, the children's court, the district attorney, the public defender, local law enforcement agencies, the public schools and other entities such as private nonprofit organizations, the business community and religious organizations.

F. "At a risk of such referral" means that the juvenile has demonstrated specific behaviors that if repeated will make the juvenile eligible for a referral to juvenile probation and parole, and these behaviors have come to the attention of public agency officials such as the public school, law enforcement or protective services officials. Some examples are truancy or disruptive behavior in school.

G. "Required partner" means the officials and public agencies, and tribal equivalents, whose partnership in the juvenile justice continuum is statutorily required. These are: a unit of local or tribal government, the children's court, the district attorney, the public defender, a local (municipal, county, tribal) law enforcement agency, and the public school district.
[8.14.13.7 NMAC - Rp, 8.14.13.7 NMAC, 07/31/2007]

8.14.13.8 ALLOWABLE USES OF GRANT FUND MONEY: The allowable uses for grant fund money are those set forth in the Juvenile Continuum Act, Laws 2007, Chapter 351. Grant fund money may be used to provide:

A. Cost effective services for juveniles who are at risk of referral from a required partner to the department's juve-

nile probation and parole. These are services that have previously been demonstrated through research or evaluation to be effective at preventing or intervening in the targeted behaviors or that lead to the desired change in targeted behaviors. Targeted behaviors are those which prompted the juvenile's referral to the service, or that are effective in diverting the juvenile from involvement with the juvenile justice system. Applicants may be requested to provide proof of cost-effectiveness in their funding proposals.

B. Temporary, nonsecure alternatives to detention for juveniles who have been arrested, or who have been referred to the department's juvenile probation and parole offices. Temporary nonsecure alternatives to detention are programs or services that provide an alternative to placement in a secure juvenile detention facility as authorized in the Delinquency Act. Examples are a licensed foster home, a nonsecure shelter facility, or the child's place of residence under conditions and restrictions approved by the court.
[8.14.13.8 NMAC - Rp, 8.14.13.8 NMAC, 07/31/2007]

8.14.13.9 IDENTIFYING PRIORITIES FOR AWARD OF GRANT FUND MONEY: Each fiscal year that money is available to be disbursed from the grant fund, the department in consultation with JJAC shall determine specific priorities for disbursement of the available money. The priorities must be selected from among the allowable uses specified for grant fund money.
[8.14.13.9 NMAC - Rp, 8.14.13.9 NMAC, 07/31/2007]

8.14.13.10 PROCUREMENT CODE TO PROVIDE MECHANISM FOR AWARD OF GRANT FUND MONEY:

A. All awards from the grant fund shall be made pursuant to the provisions of the Procurement Code and regulations promulgated thereunder.

B. The department in consultation with JJAC may establish priorities for expenditure of grant fund money. Any priority determinations shall be stated in the requests for proposals issued by the department.

C. The department shall issue requests for proposals to continuums. The requests for proposals shall identify the amount of money available, and the specific purpose(s) for which the money is available. The requests for proposals shall identify such additional specific criteria as the department, in consultation with JJAC,

finds necessary to effectuate the allowable uses selected for award of grant fund money, and that are consistent with the legislative mandate.

(1) Applicants shall be required to demonstrate that at least forty percent of the cost of the proposed project will be paid with local matching funds. The local matching funds may consist of money, land, equipment or in-kind services.

(2) A juvenile justice continuum shall be established through a memorandum of understanding (MOU) and a continuum board. For tribal governments, the corresponding agencies/entities must be the continuum members, and there must be a comparable memorandum of understanding and a continuum board. Applicants shall be required to submit the MOU establishing their juvenile justice continuum as a formal partnership that includes all required partners, and that has a continuum board as its governing authority.

D. The issuance of requests for proposals, and the process of selecting among submitted proposals, shall be conducted and governed entirely by the applicable provisions of the Procurement Code and regulations promulgated thereunder.

E. The JJAC shall serve as the evaluation committee reviewing all submitted proposals. The JJAC shall make its recommendations to the department's secretary.

F. In the event the department in consultation with JJAC determines that an alternative procurement process is warranted in a specific circumstance, the award of grant fund money shall proceed in compliance with applicable provisions of the Procurement Code. Examples of alternative procurement processes include, but are not limited to: emergency procurements and sole source procurements.

G. The department's secretary shall have final approval of awards from the grant fund.
[8.14.13.10 NMAC - Rp, 8.14.13.10 NMAC, 07/31/2007]

8.14.13.11 GRANT FUND RECIPIENTS SHALL ENTER INTO FORMAL CONTRACTS WITH THE DEPARTMENT: Consistent with the provisions of the Procurement Code and regulations promulgated thereunder, the department shall negotiate with successful applicants to formalize the agreed-upon project as the subject of a contract between the grantee and the department. The contract shall identify with specificity the obligations of the grant fund recipient, including funds accountability and audit requirements.
[8.14.13.11 NMAC - Rp, 8.14.13.11 NMAC, 07/31/2007]

8.14.13.12 RIGHTS AND REMEDIES:

A. The rights and remedies of continuums that submit proposals shall be those available to them under the Procurement Code and regulations promulgated thereunder.

B. The rights and remedies of grant fund recipients shall be those available to them pursuant to their contracts with the department.

[8.14.13.12 NMAC - Rp, 8.14.13.12 NMAC, 07/31/2007]

HISTORY OF 8.14.13 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

CYFD ICD Rule 1, Regional Juvenile Services Grant Fund Regulations, filed 12-27-94.

History of Repealed Material:

CYFD ICD Rule 1, Regional Juvenile Services Grant Fund Regulations, filed 12-27-94 - Repealed effective 6-30-2004.

8.14.13 NMAC Regional Juvenile Services Grant Fund, filed 07-18-2006 - Repealed effective 07-31-2007.

**NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT
FAMILY SERVICES DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 8 CHILDREN, YOUTH AND FAMILIES GENERAL PROVISIONS
PART 7 COURT ORDERED DOMESTIC VIOLENCE OFFENDER TREATMENT PROGRAMS**

8.8.7.1 ISSUING AGENCY: New Mexico Children, Youth and Families Department.
[8.8.7.1 NMAC - N, 07/31/07]

8.8.7.2 SCOPE: General public, providers of domestic violence offender treatment programs, persons convicted of domestic violence, courts, and attorneys.
[8.8.7.2 NMAC - N, 07/31/07]

8.8.7.3 STATUTORY AUTHORITY: NMSA 1978 Sections 30-3-15 and 30-3-16 (2007).
[8.8.7.3 NMAC - N, 07/31/07]

8.8.7.4 DURATION: Permanent.
[8.8.7.4 NMAC - N, 07/31/07]

8.8.7.5 EFFECTIVE DATE: July 31, 2007, unless a later date is cited at

the end of a section.
[8.8.7.5 NMAC - N, 07/31/07]

8.8.7.6 OBJECTIVE: The objective of Chapter 8, Part 7 is to establish the manner in which the department will approve programs to provide court-ordered domestic violence offender treatment, and will identify approved programs to court personnel.
[8.8.7.6 NMAC - N, 07/31/07]

8.8.7.7 DEFINITIONS:
A. "Approved DVOT program list" means the list compiled by the department for use by New Mexico courts in ordering domestic violence offenders to complete domestic violence offender treatment pursuant to NMSA 1978 Sections 30-3-15 and 30-3-16 (2007).

B. "Approved DVOT program" means a domestic violence offender treatment program that has been approved by the department to provide domestic violence offender treatment pursuant to the NMSA 1978 Sections 30-3-15 and 30-3-16 (2007).

C. "Conditional approval" means the approval granted to domestic violence offender treatment programs to provide domestic violence offender treatment from the effective date of the DVOT Act, July 1, 2007, until the first annual approved DVOT program list is compiled on or about January 1, 2008.

D. "Court-ordered domestic violence offender treatment" means domestic violence offender treatment ordered by a court pursuant to NMSA 1978 Sections 30-3-15 or 30-3-16 (2007).

E. "Department" means the children, youth and families department.

F. "Domestic violence offender" means a person convicted under NMSA 1978 Section 30-3-15 or 30-3-16 (2007).

G. "Domestic violence offender treatment" or "DVOT" means services, approved by the department, that address and seek to ameliorate domestic violence perpetration. Such services may, but need not, be provided by licensed therapists.
[8.8.7.7 NMAC - N, 07/31/07]

8.8.7.8 CONDITIONAL APPROVAL OF DVOT PROGRAMS TO PROVIDE DVOT SERVICES AS OF JULY 1, 2007, TO BE IN EFFECT UNTIL FIRST ANNUAL LIST IS COMPILED

A. The department shall compile an initial list of agencies and individual providers who have received conditional approval from the department to provide DVOT programs as of July 1, 2007 through January 1, 2008.

B. Conditional approval is based upon the provider's submission of a formal application to the department, demonstrating the operation of a functioning program that uses evidence-based techniques that effectively serve the target population. The formal application is separate from, and in addition to, the provider's response to an initial survey distributed by the department for purposes of identifying providers and coverage areas.

C. In granting conditional approval for the initial list, the department may rely in part upon its knowledge of services the provider has supplied prior to July 1, 2007, whether pursuant to contract with the department, or otherwise.

D. The department shall distribute the initial list of qualified programs to New Mexico district tribunals no later than July 1, 2007. The department shall notify courts of any additions or deletions to the initial list during the period that the initial list is in effect.

[8.8.7.8 NMAC - N, 07/31/07]

8.8.7.9 LIST OF APPROVED DVOT PROGRAMS TO BE COMPILED ANNUALLY

A. The department shall compile a list of approved DVOT programs to be distributed to sentencing tribunals on or about January 1, 2008 and annually thereafter.

B. DVOT providers that wish to be included in the approved annual list must comply with the application and renewal procedures set forth in this regulation.

[8.8.7.9 NMAC - N, 07/31/07]

8.8.7.10 CRITERIA FOR APPROVED DVOT PROGRAMS: The department shall approve DVOT programs that include the following criteria and features:

A. an initial assessment to determine if the domestic violence offender will benefit from participation in the program and a policy in place for notification to the court if a determination is made that an offender will not benefit from the program; the program will provide recommendations for alternative offender treatment to the court pursuant to section 15;

B. a written contract, which must be signed by the domestic violence offender, that sets forth:

(1) attendance and participation requirements;

(2) consequences for failure to attend or participate in the program;

(3) a confidentiality clause that prohibits disclosure of information revealed during treatment sessions, except to the court as provided in Subsection H below or

as otherwise provided for by law; and

(4) a requirement that a domestic violence offender not be under the influence of alcohol or drugs during a treatment session;

C. strategies to hold domestic violence offenders accountable for their violent behavior;

D. a requirement for group discussions that the participants be limited to members of the same gender;

E. a requirement that offenders under the age of 18 may be enrolled in intervention groups so long as they are separate from adult groups;

F. goals that focus on the cessation of abuse or violence, whether physical or non-physical, and that is mindful of the safety of the victim, current partner and children;

G. an education component for treatment that:

(1) defines physical, emotional, sexual, economic and verbal abuse and techniques for stopping those forms of abuse; and

(2) examines gender roles, socialization, the nature of violence, the dynamics of power and control and the effects of domestic violence on children;

H. a requirement that the program provide monthly written reports to the presiding judge or the domestic violence offender's probation or parole officer regarding:

(1) proof of the domestic violence offender's enrollment in the program;

(2) progress reports that address the domestic violence offender's attendance, fee payments and compliance with other program requirements; and

(3) evaluations of progress made by the domestic violence offender and recommendations as to whether or not to require the offender's further participation in the program;

I. through June 30, 2008, approved DVOT programs may provide either group or individual sessions; the group program shall consist of at least 52 completed sessions; the individual program shall consist of at least 26 completed sessions; a completed session must be no less than ninety minutes and must focus on the educational components outlined in this section; individual sessions to address crisis management or case management issues will not replace group sessions;

J. beginning July 1, 2008, a requirement that all approved domestic violence offender treatment programs must consist of at least 52 completed group sessions lasting no less than ninety minutes each; individual sessions to address crisis management or case management issues will not replace group sessions; and

K. counseling for couples shall not be a component of an approved domestic violence offender treatment program.

[8.8.7.10 NMAC - N, 07/31/07]

8.8.7.11 APPLICATION PROCEDURES FOR INCLUSION IN THE APPROVED DVOT PROGRAM LIST

A. Application packets for inclusion in the annual approved DVOT program list will be available from the department no later than June 1, 2007. Providers must submit a completed application packet for inclusion in the approved DVOT program list.

B. The application process for inclusion in the annual approved DVOT list shall be separate from, and shall not be influenced by, any requests for proposals or contractual awards issued by the department.

[8.8.7.11 NMAC - N, 07/31/07]

8.8.7.12 EVALUATION OF APPLICATIONS FOR INCLUSION IN THE APPROVED DVOT LIST

A. Applications shall be evaluated for approval by the department.

B. The evaluation process may include a component based upon prior years' performance, and whether or not concerns from prior years have been satisfactorily addressed and corrected.

C. The evaluation process may include a component based upon feedback from local courts and DVOT program participants.

D. *Geographic coverage areas.* The department shall seek to identify providers who can provide approved DVOT treatment at locations within a reasonable commute for all geographic areas within the state. However all approved DVOT programs must satisfy the minimum criteria.

E. The evaluation shall not include any preference based on the provider's current or prior contractual agreements with the department, nor absence thereof.

[8.8.7.12 NMAC - N, 07/31/07]

8.8.7.13 NOTIFICATION TO PROGRAMS OF EVALUATION RESULTS

A. DVOT program applicants shall be notified by the department whether they have been selected for inclusion on the annual approved DVOT program list. If the provider is not selected, the notification shall state the reasons for non-selection.

B. A DVOT program whose application was not selected for

inclusion on the annual approved DVOT program list may re-apply for inclusion after correcting the deficiencies identified by the department. The program must establish that the reasons for non-selection have been satisfactorily corrected.

C. The department will evaluate re-submitted applications as promptly as possible; however, staffing priority will be given to the evaluation and maintenance of programs already identified on the current approved DVOT provider list.

[8.8.7.13 NMAC - N, 07/31/07]

8.8.7.14 DISTRIBUTION OF APPROVED DVOT PROVIDER LIST

A. The department shall distribute its list of approved DVOT programs annually on or about January 1, to sentencing courts, public defenders, district attorneys, DVOT providers, and other interested parties.

B. The department shall promptly update the list to identify newly-approved providers and providers who have been removed from the annual list.

C. The approved DVOT provider list, as updated, shall be available on the department's website: www.cyfd.org.

[8.8.7.14 NMAC - N, 07/31/07]

8.8.7.15 SERVICES PURSUANT TO COURT ORDER:

A. Approved DVOT programs are to provide domestic violence offender treatment in accordance with the terms of the court order applicable to individual clients. Court orders should specify that the domestic violence offender complete the approved DVOT program.

B. If the approved DVOT program assesses that alternative treatment is appropriate for an offender, the program shall notify the court so that the court order may be modified. The recommended alternative treatment shall be deemed to constitute the approved DVOT program for that offender.

C. In the event a program is de-listed, domestic violence offenders should be re-directed to complete treatment with another approved DVOT program.

[8.8.7.15 NMAC - N, 07/31/07]

8.8.7.16 MONITORING OF APPROVED DVOT PROGRAMS

A. The department shall conduct ongoing monitoring of approved DVOT programs.

B. Approved DVOT programs must allow the department to conduct site visits during regular business hours, to determine compliance with approved criteria.

C. The department will

conduct site visits at least annually.

D. Approved providers will be required to report and verify recommendations for alternative offender treatment.

E. Approved DVOT providers must maintain data and records as required by the department.

F. Judges, district attorneys, public defenders, other court personnel, domestic violence offenders, their attorneys and families, will be encouraged to provide feedback regarding the efficacy of approved DVOT programs, to the programs and to the department.

G. The department will investigate complaints as promptly as possible.

H. The department may require approved DVOT providers to take corrective action in response to the department's ongoing monitoring and evaluation of feedback and complaints. Failure to implement corrective action may result in de-listing of the DVOT program.

[8.8.7.16 NMAC - N, 07/31/07]

8.8.7.17 DE-LISTING OF PROGRAMS; APPEAL RIGHTS

A. Programs may be removed from the approved DVOT provider list upon a determination by the department that:

(1) the program is not providing the services substantially as described in its approved application for inclusion in the annual approved DVOT provider list;

(2) the program has requested to be removed from the list;

(3) failure to update information;

or
(4) failure to implement corrective action required by the department.

B. A program that is removed from the annual approved DVOT provider list, not at its own request, may appeal the removal within 10 calendar days of receipt of the notice of removal. An appeal hearing shall be conducted by an administrative hearing officer appointed by the department secretary, within 15 calendar days of receipt of the notice of removal. The appeal shall be conducted as provided by 8.8.4 NMAC.

[8.8.7.17 NMAC - N, 07/31/07]

8.8.7.18 ANNUAL RENEWAL:

Renewal shall not be automatic from year to year. Each approved DVOT program must submit an annual application packet, which may be obtained from the department.

[8.8.7.18 NMAC - N, 07/31/07]

HISTORY OF 8.8.7 NMAC:
[RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.99 NMAC, Sections 2, 7, 124, 128, 135, 138, 148, 150, and 151 effective 9/1/07.

20.2.99.2 SCOPE. Agencies affected by this part are: federal transportation agencies (the federal highway administration (FHWA) and the federal transit administration (FTA) of the United States department of transportation (US DOT)), and state and local agencies responsible for transportation planning and air quality management that are within the geographic jurisdiction of the environmental improvement board (see also 20.2.99.6 NMAC).

A. The provisions of this part shall apply in all non-attainment and maintenance areas for transportation-related criteria pollutants for which the area is designated non-attainment or has a maintenance plan.

B. The provisions of this part apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10) and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM2.5).

C. The provisions of this part apply with respect to emissions of the following precursor pollutants in nonattainment or maintenance areas:

(1) volatile organic compounds and nitrogen oxides in ozone areas;

(2) nitrogen oxides in nitrogen dioxide areas; ~~and~~

(3) volatile organic compounds and/or, nitrogen oxides, in PM10 areas if:

(a) the EPA region 6 administrator or the department has made a finding (including a finding as part of a SIP or a submitted implementation plan revision) that transportation-related emissions of one or both of these precursor emissions within the nonattainment area are a significant contributor to the PM10 nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT; or

(b) the applicable SIP (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

(4) nitrogen oxides in PM2.5 areas, unless both the EPA regional administrator and the department have made a finding that transportation-related emissions of nitrogen oxides within the nonat-

tainment area are not a significant contributor to the PM_{2.5} nonattainment problem and has as notified the MPO (or the NMDOT in the absence of an MPO) and US DOT, or the applicable implementation plan (or implementation plan submission) does not establish as approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

(5) VOC, sulfur oxides (SO_x) and/or ammonia (NH₃) in PM_{2.5} areas either if the EPA regional administrator or the department has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT, or if the applicable implementation plan (or implementation plan submission) establishes and approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

D. The provisions of this part apply to PM_{2.5} nonattainment and maintenance areas with respect to PM_{2.5} from re-entrained road dust if the EPA regional administrator or the department has made finding that re-entrained road dust emissions within the area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT, or if the applicable SIP (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel and paved and unpaved roads (including emissions from anti-skid and deicing material(s)).

E. The provisions of this part apply to maintenance areas for 20 years from the date US EPA approves the department's request under Section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this part shall apply for more than 20 years.

[12/14/94; 11/23/98; 20.2.99.2 NMAC - Rn, 20 NMAC 2.99.101 10/31/02; A, 10/15/05; A, 9/1/07]

20.2.99.7 DEFINITIONS.

Terms used but not defined in this part shall have the meaning given them by the CAA titles 23 and 49 U.S.C., US EPA regulations, US DOT regulations, and 20.2.2 NMAC (Definitions), in that order of priority.

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

CFR 50.9.

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

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

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

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

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

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

F. "CFR" means the code of federal regulations.

G. "Clean data" means air quality monitoring data determined by US EPA to meet the national ambient air quality standard.

H. "Conformity analyses" means regional or localized "hot-spot" computer modeling assessment or any other analyses which serve as the basis for the conformity determination.

I. "Conformity determination" means the demonstration of consistency with motor vehicle emissions budgets for each pollutant and precursor identified in the applicable SIP. The conformity determination is the affirmative written documentation declaring conformity with the applicable SIP which is submitted to FHWA and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the plans purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards; and that such activities will not:

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

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

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

J. "Consultation" means that one party confers with another identified party, provides or makes available all relevant information to that party, and, prior to taking any action, considers the views of that party and (except with respect to those actions for which only notification is required) responds to written comments in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action. Specific procedures and processes are described in 20.2.99.116 through 20.2.99.124 NMAC.

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

L. "Department" means the New Mexico environment department.

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

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

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

P. "FHWA" means the federal highway administration of US DOT.

Q. "FHWA / FTA project", for the purpose of this part, is any highway or transit project which is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass transit pro-

gram, or requires federal highway administration (FHWA) or federal transit administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

R. "Forecast period" with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

S. "FTA" means the federal transit administration of US DOT.

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

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

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

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

U. "Horizon year" is a year for which the transportation plan describes the envisioned transportation system in accordance with 20.2.99.125 NMAC.

V. "Hot-spot analysis" is an estimation of likely future localized CO [and] PM10, and/or PM2.5 pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

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

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

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

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

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

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

AC. "Metropolitan planning organization (MPO)" is that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making. In the absence of an MPO, the NMDOT shall be responsible for the transportation planning processes assigned to MPOs under this part

AD. "Milestone" has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM10 nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

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

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

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

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

AL. "NMDOT" means the New Mexico department of transportation or its successor agency or authority, as represented by the department secretary or his or her designee.

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

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

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

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

AN. "Regionally significant project" means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum:

(1) all principal arterial highways; and

(2) all fixed guideway transit facilities that offer an alternative to regional highway travel.

AO. "Safety margin"

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

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

AQ. "State implementation plan (SIP)" means an applicable implementation plan and the applicable portion (or portions) of the New Mexico state implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) of the CAA and which implements the relevant requirements of the CAA (see the definition for "applicable implementation plan").

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

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

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

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

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

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

AU. "Transportation control measure (TCM)" is any measure that is specifically identified and committed to in the SIP that is either one of the types listed in Section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this part.

AV. "Transportation improvement program (TIP)" means a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

AW. "Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

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

AY. "US EPA" means the United States environmental protection agency

AZ. "US DOT" means the United States department of transportation.

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

[12/14/94; 11/23/98; 20.2.99.7 NMAC - Rn, 20 NMAC 2.99.107 10/31/02; A, 10/15/05; A, 9/1/07]

20.2.99.124 PUBLIC CONSULTATION PROCEDURES:

A. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period, and prior to taking formal action on a conformity determination for all transportation plans and TIPs, and projects, consistent with the requirements of 23 CFR part 450, including sections 450.316 (b)(1), 450.322(c), and 450.324(c) as in effect on the date of adoption of this Part. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR ~~7.95~~ 7.43. In addition, any such agency must specifically address in writing all public comments which allege that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity

determinations for projects to the extent otherwise required by law (e.g. NEPA).

B. The opportunity for public involvement provided under this section (20.2.99.124 NMAC) shall include access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination, and the obligation of any such agency to consider and respond in writing to significant comments.

C. No transportation plan, TIP, or project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this section, without regard to whether the US DOT has certified any process under 23 CFR part 450.

[12/14/94; 11/23/98; 09/08/99; 20.2.99.124 NMAC - Rn, 20 NMAC 2.99.124 10/31/02; A, 9/1/07]

20.2.99.128 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS - GENERAL.

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

B. The following table (Table 1) indicates the criteria and procedures in 20.2.99.129 NMAC through 20.2.99.138 NMAC which apply for transportation plans, TIPs, and FHWA/FTA projects. Subsections C through I of this section (20.2.99.128 NMAC) explain when the budget, interim emission, and hot spot tests are required for each pollutant and NAAQS. Subsection J of this section (20.2.99.128 NMAC) addresses conformity requirements for areas with approved or adequate limited maintenance plans. Subsection K of this section (20.2.99.128 NMAC) addresses nonattainment maintenance areas which EPA has determined have insignificant motor vehicle emissions. Subsection L of this section (20.2.99.128 NMAC) addresses isolated rural nonattainment and maintenance areas. Table 1 follows. Table 1. Conformity Criteria.

(1) All actions at all times

(a) 20.2.99.129 NMAC. Latest planning assumptions

(b) 20.2.99.130 NMAC. Latest emissions model

(c) 20.2.99.131 NMAC. Consultation

(2) Transportation Plan

(a) Subsection B of 20.2.99.132 NMAC. TCMs

(b) 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim emissions

(3) TIP

(a) Subsection C of 20.2.99.132 NMAC. TCMs

(b) 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim emissions

(4) Project (From a conforming plan and TIP)

(a) 20.2.99.133 NMAC. Currently conforming plan and TIP

(b) 20.2.99.134 NMAC. Project from a conforming plan and TIP

(c) 20.2.99.135 NMAC. CO [and] PM10, and PM2.5 hot spots

(d) 20.2.99.136 NMAC. PM10 and PM2.5 control measures

(5) Project (Not from a conforming plan and TIP)

(a) Subsection D of 20.2.99.132 NMAC. TCMs

(b) 20.2.99.133 NMAC. Currently conforming plan and TIP

(c) 20.2.99.135 NMAC. CO [and] PM10, and PM2.5 hot spots

(d) 20.2.99.136 NMAC. PM10 and PM2.5 control measures

(e) 20.2.99.137 NMAC and/or 20.2.99.138 NMAC. Emissions budget and/or interim emissions.

C. 1-hour ozone nonattainment and maintenance areas. This Subsection (Subsection C of Section 20.2.99.128 NMAC) applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (i.e., until the effective date of any revocation of the 1-hour ozone NAAQS for an area). In addition to the criteria listed in Table 1 in Subsection B of this section (20.2.99.128 NMAC) that are required to be satisfied at all times, in such ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emission tests are satisfied as described in the following.

(1) In all 1-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made on or after:

(a) the effective data EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS is adequate for trans-

portation conformity purposes;

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

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

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget form an applicable implementation plan for the 1-hour ozone NAAQS and no adequate motor vehicle emissions budget form a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS.

(3) An ozone nonattainment area must satisfy the interim emissions test for NOx, as required by 20.2.99.138 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or phase I attainment demonstration that does not include a motor vehicle emissions budget for NOx. The implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NOx if the implementation plan or plan submission contains an explicit NOx motor vehicle emissions budget that is intended to act as a ceiling on future NOx emissions, and the NOx motor vehicle emissions budget is a net reduction from NOx emissions levels in 1990.

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

(a) the interim emissions tests required by 20.2.99.138 NMAC; or

(b) the department shall submit to US EPA an implementation plan revision for the 1-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or an attainment demonstration, and the budget test required by 20.2.99.137 NMAC must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection C of 20.2.99.128 NMAC).

(5) Notwithstanding Paragraphs (1) and (2) of Subsection C of 20.2.99.128 NMAC, moderate and above ozone nonattainment areas with three years of clean data for the 1-hour ozone NAAQS that have not

submitted a maintenance plan and that US EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 1-hour NAAQS must satisfy one of the following requirements:

(a) the interim emissions tests as required by 20.2.99.138 NMAC;

(b) the budget test as required by 20.2.99.137 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 1-hour ozone NAAQS (subject to the timing requirements of Paragraph (1) of Subsection C of 20.2.99.128 NMAC); or

(c) the budget test as required by 20.2.99.137 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the US EPA rulemaking that determines that the area has clean data.

D. 8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area. This Subsection (Subsection D of Section 20.2.99.128 NMAC) applies to areas that were never designated nonattainment for the 1-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. This Subsection (Subsection D of Section 20.2.99.128 NMAC) applies one (1) year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.2.99.109 NMAC. In the addition to the criteria listed in Table 1 in Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations much include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following.

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test much be satisfied as required by Section 20.2.99.137 NMAC for conformity determinations made on or after;

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

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

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

direct final rulemaking.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, part D subpart 1 areas), the interim emissions tests must be satisfied as required by Section 20.2.99.138 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour NAAQS.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NO_x, as required by Section 20.2.99.138 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determination is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 2002.

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

(a) the interim emissions tests required by Section 20.2.99.138 NMAC; or

(b) the department shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by Section 20.2.99.137 NMAC must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection D of 20.2.99.128 NMAC).

(5) Notwithstanding Paragraphs (1) and (2) of Subsection D of 20.2.99.128 NMAC, ozone nonattainment areas with three (3) years of clean data for the 8-hour ozone NAAQS that have not submitted maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment

demonstration requirements for the 9-hour ozone NAAQS must satisfy one of the following requirements:

(a) the interim emissions tests as required by Section 20.2.99.138 NMAC;

(b) the budget test as required by Section 20.2.99.137 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS (subject to the timing requirements of Paragraph (1) of Subsection D of 20.2.99.128 NMAC; or

(c) the budget test as required by Section 20.2.137 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

E. 8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area. This provision applies one (1) year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of Section 2.20.99.109 NMAC. In addition to the criteria listing in Table 1 in Subsection B of this section (2.20.2.128 NMAC) that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following.

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by Section 20.2.99.137 NMAC for conformity determinations made on or after:

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

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

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

(2) Prior to Paragraph (1) or Subsection E of this section (20.2.99.128 NMAC) applying, the following test(s) must be satisfied, subject to the exception in Subparagraph (e) of Paragraph (2) of Subsection E of this section (20.2.99.128 NMAC).

(a) If the 8-hour ozone nonattain-

ment area covers the same geographic area as the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by Section 20.2.99.137 NMAC using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission.

(b) If the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by Section 20.2.99.137 NMAC for either the 8-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by Section 20.2.99.116 NMAC; or the 1-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission. If additional emission reductions are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases, these emissions reductions must come from within the 8-hour nonattainment area.

(c) If the 8-hour ozone nonattainment area covers a larger geographic area and encompasses the entire 1-hour ozone nonattainment or maintenance area(s) the budget test as required by Section 20.2.99.137 NMAC for the portion of the 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; and the interim emissions tests as required by Section 20.2.99.138 NMAC for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state of a multi-state 1-hour nonattainment area partially covers a 1-hour ozone nonattainment or maintenance area(s).

(d) If the 8-hour ozone nonattainment area partially covers a 1-hour ozone nonattainment or maintenance area(s) the budget test as required by Section 20.2.99.137 NMAC for the portion of the 8-hour ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where they can be reasonably iden-

tified through the interagency consultation process required by Section 20.2.99.116 NMAC ; and the interim emissions tests as required by Section 20.2.99.138 NMAC, when applicable, for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state in a multi-state 1-hour nonattainment or maintenance area.

(e) Notwithstanding Subparagraphs (a), (b), (c), and (d) of Paragraph (2) of Subsection E of this section (20.2.99.128 NMAC), the interim emissions tests as required by Section 20.2.99.138 NMAC, where the budget test using the approved or adequate motor vehicle emissions budget in the 1-hour ozone applicable implementation plan(s) or implementation plan submission(s) for the relevant area or portion thereof is not the appropriate test and the interim emissions tests are more appropriate to ensure that the transportation plan, TIP, or project not from a conforming plan and TIP will not create new violations, worsen existing violations, or delay timely attainment of the 8-hour ozone standard, as determined through the interagency consultation process required by Section 20.2.99.116 NMAC.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NO_x, as required by Section 20.2.99.138 NMAC, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a fifteen percent (15%) plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 2002. Prior to an adequate or approved NO_x motor vehicle emissions budget in the implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emission budget is a net reduction from

NO_x emissions levels in 1990.

(4) Notwithstanding Paragraphs (1) and (2) of Subsection E of this section (20.2.99.128 NMAC), ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirement for the 8-hour ozone NAAQS must satisfy one of the following requirements:

(a) the budget test and/or interim emissions tests are required by Sections 20.2.99.137 NMAC and 20.2.99.138 NMAC and as described in Paragraph (2) of Subsection E of this section (20.2.99.128 NMAC);

(b) the budget test as required by Section 20.2.99.137 NMAC, using the adequate or approved motor vehicle emission budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS (subject to the timing requirements of Paragraph (1) of Subsection E of 20.2.99.128 NMAC; or

(c) the budget test as required by Section 20.2.99.137 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

F. CO nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or interim emissions tests are satisfied as described in the following.

(1) FHWA/FTA projects in CO nonattainment or maintenance areas must satisfy the hot spot test required by Subsection A of 20.2.99.135 NMAC at all times. Until a CO attainment demonstration or maintenance plan is approved by US EPA, FHWA/FTA projects must also satisfy the hot spot test required by Subsection B of 20.2.99.135 NMAC.

(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made:

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

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

(c) the effective date of EPA's

approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(3) Except as provided in Paragraph (4) of Subsection F of 20.2.99.128 NMAC, in CO nonattainment areas the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

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

(a) the interim emissions tests required by 20.2.99.138 NMAC; or

(b) the department shall submit to US EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by 20.2.99.137 NMAC must be satisfied using the adequate or approved motor vehicle emissions budget(s) as described in Paragraph (2) of Subsection F of 20.2.99.128 NMAC).

G. PM10 nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in PM10 nonattainment and maintenance areas conformity determinations must include a demonstration that the hot spot, budget and/or interim emissions tests are satisfied as described in the following.

(1) FHWA/FTA projects in PM10 nonattainment or maintenance areas must satisfy the hot spot test required by 20.2.99.135 NMAC.

(2) In PM10 nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made:

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

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

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

(3) In PM10 nonattainment areas the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for con-

formity determinations made:

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

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

H. NO₂ nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in Subsection B of 20.2.99.128 NMAC that are required to be satisfied at all times, in NO₂ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following.

(1) In NO₂ nonattainment and maintenance areas the budget test must be satisfied as required by 20.2.99.137 NMAC for conformity determinations made:

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

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

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

(2) In NO₂ nonattainment areas the interim emissions tests must be satisfied as required by 20.2.99.138 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

I. PM_{2.5} nonattainment and maintenance areas. In addition to the criteria listed in Table 1 in Subsection B of Section 20.2.99.128 NMAC that are required to be satisfied at all times, in PM_{2.5} nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in PM_{2.5} nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of 20.2.99.135 NMAC.

~~(4)~~(2) In PM_{2.5} nonattainment and maintenance areas the budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for

transportation conformity purposes;

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

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

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

~~(2)~~ (3) In PM_{2.5} nonattainment areas the interim emissions tests must be satisfied as required by Section 20.2.99.138 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

J. Areas with limited maintenance plans. Notwithstanding the other paragraphs of this section, an area is not required to satisfy the regional emissions analysis for Sections 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for a given pollutant and NAAQS, if the area has an adequate or approved limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in Table 1 or Subsection B of this section (20.2.99.128 NMAC) is still required, including the hot-spot requirements for projects in CO₂, ~~and~~ PM₁₀, and PM_{2.5} areas.

K. Areas with insignificant motor vehicle emissions. Notwithstanding the other Subsections in this section (20.2.99.128 NMAC), and area is not required to satisfy a regional emissions analysis for Sections 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that

NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in Table 1 or Subsection B of this section (20.2.99.128 NMAC) is still required, including regional emissions analyses for Sections 20.2.99.137 NMAC and/or 20.2.99.138 NMAC for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in ~~CO, PM10,~~ CO, PM₁₀, and PM_{2.5} areas in Section 20.2.99.135 NMAC must also be satisfied, unless EPA determined that the SIP also demonstrates that projects will not create new localized violations and/or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

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

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of 20.2.99.129 NMAC through 20.2.99.131 NMAC, Subsection D of 20.2.99.132 NMAC, 20.2.99.135 NMAC, and 20.2.99.136 NMAC. Until US EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of Subsection B of 20.2.99.135 NMAC ("Localized CO₂, ~~and~~ PM₁₀, and PM_{2.5} violations (hot spots)").

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim emissions tests as described in Subsections C through K of 20.2.99.128 NMAC, with the following modifications:

(a) when the requirements of 20.2.99.137 NMAC and 20.2.99.138 NMAC apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

(b) in isolated rural nonattainment

ment and maintenance areas that are subject to 20.2.99.137 NMAC, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:

(i) 20.2.99.137 NMAC;

(ii) 20.2.99.138 NMAC

(including regional emissions analysis for NOx in all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of 20.2.99.138 NMAC; or

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

(e) the choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection G of 20.2.99.128 NMAC and the methodology used to meet the requirements of item (iii) of Subparagraph (b) of Paragraph (2) of Subsection G of 20.2.99.128 NMAC must be determined through the interagency consultation process required in Paragraph (6) of Subsection B of 20.2.99.117 NMAC and Paragraph (5) of Subsection C of 20.2.99.117 NMAC through which the relevant recipients of title 23 U.S.C. or federal transit laws funds, NMDOT, the department, or the local air quality agency should reach consensus about the option and methodology selected; US EPA and US DOT must be consulted through this process as well; in the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure in 20.2.99.123 NMAC, which applies to department comments on a conformity determination.

[12/14/94; 11/23/98; 20.2.99.128 NMAC - Rn, 20 NMAC 2.99.128 10/31/02; A, 10/15/05; A, 9/1/07]

20.2.99.135 CRITERIA AND PROCEDURES - LOCALIZED CO, ~~AND~~ PM10, AND PM2.5 VIOLATIONS (HOT SPOTS).

A. This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO₂ ~~or~~ PM10, and/or PM2.5 violations or increase the frequency or severity of any existing CO₂ ~~or~~ PM10, and/or PM2.5 violations in CO₂, ~~and~~ PM10, and PM2.5 nonattainment and maintenance areas. This criterion is satisfied without a hotspot analysis in PM10 and PM2.5 nonattainment and maintenance areas for FHWA/FTA projects that are not identified in Paragraph (1) of Subsection B of 20.2.99.148 NMAC. This criterion is satisfied for all other FHWA/FTA projects in CO, PM10, and PM2.5 nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration shall be performed according to the consultation requirements of Subsection A of 20.2.99.120 NMAC and the methodology requirements of ~~[20.2.99.146]~~ 20.2.99.148 NMAC.

B. This paragraph applies for CO nonattainment areas as described in Paragraph (1) of Subsection F of 20.2.99.128 NMAC. Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of Subsection A of 20.2.99.120 NMAC and the methodology requirements of 20.2.99.146 NMAC.

[12/14/94; 11/23/98; 20.2.99.135 NMAC - Rn, 20 NMAC 2.99.135 10/31/02; A, 10/15/05; A, 9/1/07]

20.2.99.138 CRITERIA AND PROCEDURES - INTERIM EMISSIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS.

A. The transportation plan, TIP, and project not from a conforming transportation plan and TIP must satisfy the interim emissions test(s) as described in Subsections C through L of 20.2.99.128 NMAC. This criterion applies to the net effect of the action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

B. Ozone areas. The requirements of this subsection (Subsection

B of 20.2.99.138 NMAC) apply to all 1-hour ozone and 8-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met.

(1) In moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through L of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC:

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

(b) the emissions predicted in the "action" scenario are lower than 1990 emissions by any nonzero amount, in areas for the 1-hour ozone NAAQS as described in Subsection C of section 20.2.99.128 NMAC; or the 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as described in Subsections D and E of 20.2.99.128 NMAC.

(2) In marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of the Clean Air Act Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of Section 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsection G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC:

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

(b) the emissions predicted in the "action" scenario are not greater than the 1990 emissions, in areas for the 1-hour NAAQS as described in Subsection C of 20.2.99.128 NMAC; or the 2002 emissions, in areas for the 8-hour ozone NAAQS as described in Subsections D and E for 20.2.99.128 NMAC.

C. CO areas. This criterion may be met:

(1) in moderate areas with design values greater than 12.7 ppm and serious CO nonattainment areas that are subject to Clean Air Act Section 187(a)(7) if a regional emissions analysis that satisfies their requirements of Sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described

in Subsection F of 20.2.99.138 NMAC:

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

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

(2) in moderate areas with design values less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of Sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC:

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

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

D. PM10 and NO₂ areas. This criterion may be met in PM10 and NO₂ nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.2.99.138 NMAC, one of the following requirements is met:

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

(2) the emissions predicted in the "action" scenario are not greater than baseline emissions; baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM10 area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

E. PM_{2.5} areas. This criterion may be met in PM_{2.5} nonattainment areas if a regional emissions analysis that satisfies the requirements of Sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of 20.2.99.138 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of

20.2.99.138 NMAC, one of the following requirements is met:

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

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

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

(1) VOC in ozone areas;

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

(3) CO in CO areas;

(4) PM₁₀ in PM₁₀ areas;

(5) VOC and/or NO_x in PM₁₀ areas if the US EPA regional administrator or the department has made a finding that such precursor emissions from within the area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and US DOT;

(6) NO_x in NO₂ areas;

(7) PM_{2.5} areas; ~~and~~

(8) reentrained road dust in PM_{2.5} areas only if the US EPA regional administrator or the department has made a finding that emissions from reentrained road dust within the area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO and US DOT;

(9) nitrogen oxides in PM_{2.5} areas, unless the EPA regional administrator and the department have made a finding that emissions of nitrogen oxides from within the area are not a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT; and

(10) VOC, Sox and/or ammonia in PM_{2.5} areas if the EPA regional administrator or the department has made a finding that any of such precursor emissions from within the area are a significant contributor to the PM_{2.5} nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT.

G. Analysis years.

(1) The regional emissions analysis must be performed for analysis years that are no more than ten (10) years apart. The first analysis year must be no more than five (5) years beyond the year in which the conformity determination is being made. The last year of transportation plan's forecast period must also be an analysis year.

(2) For areas using Subparagraph (a) of Paragraph (2) of Subsection B of Section 20.2.99.138 NMAC, Subparagraph

(a) of Paragraph (2) of Subsection C of Section 20.2.99.138 NMAC, Paragraph (1) of Subsection D of Section 20.2.99.138 NMAC, and Paragraph (1) of Subsection E of Section 20.2.99.138 NMAC, a regional emissions analysis that satisfies the requirements of Sections 20.2.99.141 NMAC through 20.2.99.147 NMAC and Subsections G through J of Section 20.2.99.138 would not be required for analysis years in which the transportation projects and planning assumptions in the "action" and "baseline" scenarios are exactly the same. In such a case, Subsection A of Section 20.2.99.138 NMAC can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario for such analysis years.

H. "Baseline" scenario. The regional emissions analysis required by Subsections B and E of 20.2.99.138 NMAC must estimate the emissions that would result from the "baseline" scenario in each analysis year. The "baseline" scenario must be defined for each of the analysis years. The "baseline" scenario is the future transportation system that will result from current programs, including the following (except that exempt projects listed in Subsection A of 20.2.99.149 NMAC and projects exempt from regional emissions analysis as listed in Subsection B of 20.2.99.149 NMAC need not be explicitly considered):

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

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

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

I. "Action" scenario. The regional emissions analysis required by Subsections B and E of 20.2.99.138 NMAC must estimate the emissions that would result from the "action" scenario in each analysis year. The "action" scenario must be defined for each of the analysis years. The "action" scenario is the transportation system that would result from the implementation of the proposed action (transportation plan, TIP, or project not from a conforming transportation plan and TIP) and all other expected regionally significant

projects in the nonattainment area. The "action" scenario must include the following (except that exempt projects listed in Subsection A of 20.2.99.149 NMAC and projects exempt from regional emissions analysis as listed in Subsection B of 20.2.99.149 NMAC need not be explicitly considered):

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

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

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

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

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

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

J. Projects not from a conforming transportation plan and TIP. For the regional emissions analysis required by Subsections B and E of 20.2.99.138 NMAC, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "baseline" scenario must include the project with its original design concept and scope, and the "action" scenario must include the project with its new design concept and scope.

[12/14/94; 11/23/98; 20.2.99.138 NMAC - Rn, 20 NMAC 2.99.138 10/31/02; A, 10/15/05; A, 9/1/07]

DETERMINING LOCALIZED CO ~~[AND;] PM10 AND PM2.5 CONCEN-~~ **TRATIONS (HOT-SPOT ANALYSIS).**

A. CO Hot-spot Analysis.

(1) The demonstrations required by 20.2.99.135 NMAC shall be based on quantitative analysis using the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51 appendix W ("Guideline on Air Quality Models"). These procedures shall be used in the following cases, unless, different procedures developed through the interagency consultation process required in 20.2.99.116 NMAC through 20.2.99.124 NMAC and approved by the EPA region 6 administrator are used:

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

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

(c) for any project affecting one or more of the intersections which the SIP identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes; and

(d) for any project affecting one or more of the intersections which the SIP identifies as the top three intersections in the nonattainment or maintenance area based on the worst level of service.

(2) In cases other than those described in Paragraph (1) of Subsection A of 20.2.99.146 NMAC, the demonstrations required by 20.2.99.135 NMAC may be based on either:

(a) quantitative methods that represent reasonable and common professional practice; or

(b) a qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of 20.2.99.135 NMAC are met.

B. PM10 and PM2.5 Hot-spot Analysis.

(1) The hot-spot demonstration required by 20.2.99.135 NMAC shall be based on quantitative analysis methods for the following types of projects:

(a) ~~[projects which are located at sites at which violations have been verified by monitoring;]~~ new or expanded highway projects that have a significant number of or significant increase in diesel vehicles;

(b) ~~projects [which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored)]~~ affecting intersections that are at level-of-service D, E, or F with a significant number

of diesel vehicles, or those that will change to level-of-service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project; and

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

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

(e) projects in or affecting locations, areas, or categories of sites which are identified in the PM10 or PM2.5 applicable implementation plan submission, as appropriate, as sites of violation or possible violations.

(2) Where quantitative analysis methods are not required, the demonstration required by 20.2.99.135 NMAC ~~[may] for~~ projects described in Paragraph (1) of Subsection B of this section must be based on a qualitative consideration of local factors.

~~(3) [The identification of the sites described in Subparagraphs (a) and (b) of Paragraph (1) of Subsection B of 20.2.99.146 NMAC and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in 20.2.99.116 NMAC through 20.2.99.124 NMAC. US DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels.] US DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that 20.2.99.135 NMAC is met without further hot-spot analysis for any project described in Paragraph (1) of Subsection B of this Section based on appropriate modeling. US DOT, in consultation with EPA, may also consider the current air quality circumstances of a given PM2.5 or PM10 nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.~~

(4) The requirements of this Subsection B of 20.2.99.146 NMAC for quantitative analysis will not take effect until EPA releases modeling guidance on this subject and announces in the federal register that these requirements are in effect.

C. General Requirements.

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

the project.

(2) Hot-spot analyses shall include the entire project, and may be performed only after the major design features which will significantly impact concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors.

(3) Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(4) [~~PM10 or~~] CO, PM10 or PM2.5 mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor or operator to implement such measures, as required by Subsection A of 20.2.99.148 NMAC.

(5) CO, [~~and~~] PM10, and PM2.5 hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

[12/14/94; 11/23/98; 20.2.99.148 NMAC - Rn, 20 NMAC 2.99.148, 10/31/02; 20.2.99.148 NMAC - Rn, 20.2.99.146, 10/15/05; A, 9/1/07]

20.2.99.150 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES.

A. Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the federal transit laws, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local [~~PM10 or~~] CO, PM10, or PM2.5 impacts. Before a conformity determination is made, written contractual commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by 20.2.99.137 NMAC and 20.2.99.138 NMAC or used in the project-level hot-spot analysis required by 20.2.99.135 NMAC.

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

C. Written contractual commitments to mitigation or control measures shall be obtained prior to a positive conformity determination, and project sponsors must comply with such commitments.

D. If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of 20.2.99.135 NMAC, emission budget requirements of 20.2.99.137 NMAC, and interim emissions requirements of 20.2.99.138 NMAC are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under 20.2.99.116 NMAC through 20.2.99.124 NMAC. The MPO (or NMDOT in the absence of an MPO) and US DOT must find that the transportation plan and TIP still satisfy the applicable requirements of 20.2.99.137 NMAC and 20.2.99.138 NMAC and that the project still satisfies the requirements of 20.2.99.135 NMAC and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid. This finding is subject to the applicable public consultation requirements in 20.2.99.124 NMAC for conformity determinations for projects.

[12/14/94; 11/23/98; 20.2.99.150 NMAC - Rn, 20 NMAC 2.99.150, 10/31/02; 20.2.99.150 NMAC - Rn, 20.2.99.148 NMAC & A, 10/15/05; A, 9/1/07]

20.2.99.151 EXEMPTIONS.

A. Exempt projects. Notwithstanding the other requirements of this part, highway and transit projects of the types listed in table 2 of this section are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in table 2 (of this section) is not exempt if the MPO in consultation with other agencies (e.g. the department, see Subsection C of 20.2.99.120 NMAC, the US EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project)) concur that it has potentially adverse emissions impacts for any reason. NMDOT and the MPO, in consultation with the department, as appropriate, must assure that exempt projects do not interfere with TCM implementation. Table 2 follows. Table 2.

Exempt Projects.

- (1) Safety:
- (a) railroad/highway crossing;
 - (b) hazard elimination program;
 - (c) safer non-federal-aid system roads;
 - (d) shoulder improvements;
 - (e) increasing sight distance;
 - (f) safety improvement program;
 - (g) traffic control devices and operating assistance other than signalization projects;
 - (h) railroad/highway crossing warning devices;
 - (i) guardrails, median barriers, crash cushions;
 - (j) pavement resurfacing or rehabilitation;
 - (k) pavement marking demonstration;
 - (l) emergency relief (23 U.S.C. 125);
 - (m) fencing;
 - (n) skid treatments;
 - (o) safety roadside rest areas;
 - (p) adding medians;
 - (q) truck climbing lanes outside the urbanized area;
 - (r) lighting improvements;
 - (s) widening narrow pavements or reconstructing bridges (no additional travel lanes);
- (2) Mass transit:
- (a) operating assistance to transit agencies;
 - (b) purchase of support vehicles;
 - (c) rehabilitation of transit vehicles (In PM10 and PM2.5 nonattainment or maintenance areas, only if projects are in compliance with control measures in the SIP);
 - (d) purchase of office, shop, and operating equipment for existing facilities;
 - (e) purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.);
 - (f) construction or renovation of power, signal, and communications systems;
 - (g) construction of small passenger shelters and information kiosks;
 - (h) reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures);
 - (i) rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way;
 - (j) purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet (In PM10 nonattainment or maintenance areas, such projects are exempt only if projects are in compliance with control measures in the

SIP.);

(k) construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR 771.

(3) Air quality:

(a) continuation of ride-sharing and van-pooling promotion activities at current levels;

(b) bicycle and pedestrian facilities.

(4) Other:

(a) specific activities which do not involve or lead directly to construction, such as:

(i) planning and technical studies;

(ii) grants for training and research programs;

(iii) planning activities conducted pursuant to titles 23 and 49 U.S.C.; or

(iv) federal-aid systems revisions;

(b) engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action;

(c) noise attenuation;

(d) emergency or hardship advance land acquisitions (23 CFR 710.2044 503);

(e) acquisition of scenic easements;

(f) plantings, landscaping, etc.;

(g) sign removal;

(h) directional and informational signs;

(i) transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities);

(j) repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational, or capacity changes.

B. Projects exempt from regional emissions analyses. Notwithstanding the other requirements of this part, highway and transit projects of the types listed in table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO [or PM10] concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. The local effects of projects with respect to PM10 and PM2.5 concentrations must be considered and a hot-spot analysis performed prior to making a project-level conformity determination, if a project in table 3 also meets the criteria of Paragraph (1) of Subsection B of 20.2.99.148 NMAC. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type list-

ed in table 3 (of this section) is not exempt from regional emissions analysis if the MPO in consultation with other agencies (e.g. the department, see Subsection C of 20.2.99.120 NMAC), the US EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows. Table 3. Projects Exempt from Regional Emissions Analyses:

(1) intersection channelization projects;

(2) intersection signalization projects at individual intersections;

(3) interchange reconfiguration projects;

(4) changes in vertical and horizontal alignment;

(5) truck size and weight inspection stations;

(6) bus terminals and transfer points.

[12/14/94; 11/23/98; 20.2.99.151 NMAC - Rn, 20 NMAC 2.99.151, 10/31/02; 20.2.99.151 NMAC - Rn, 20.2.99.149 NMAC & A, 10/15/05; A, 9/1/07]

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

LOCAL GOVERNMENT DIVISION

This is an amendment to 2.40.3 NMAC, Sections 9 and 10, effective July 31, 2007

2.40.3.9 ELIGIBLE SERVICE PROVIDERS: [Service providers must be nonprofit organizations that meet one of the two following criteria:

A. Must have a mission to provide a range of free legal services to New Mexicans living in poverty and be able to demonstrate the capacity to cooperate with state and local bar associations, pro bono programs, private attorneys and other entities to increase the availability of free legal services to low income New Mexicans, or

B. Must have a program(s) to increase and coordinate statewide access to civil legal services for low income persons through the use of technology.] To be eligible to contract for monies with the commission service providers shall provide to the division documentation that they:

A. are nonprofit organizations, tax exempt under the Internal Revenue Code, Section 501(c) or its successor or organized and operated exclusively for non-profit activities within the categories recognized as such by the Internal Revenue Code, Section 501(c) or its succes-

sor; and

B. are registered with the state of New Mexico as a non-profit organization and listed on the state's web site; and

C. are organized and operated to provide free legal services to low income persons residing in New Mexico and do not engage in any other except related activity or are organized and operated as a separate department within a larger organization that has as its purpose the provision of free legal services to low income persons residing in New Mexico and that employs at least one full-time attorney dedicated solely to providing these services; and

D. are willing and able to cooperate with state and local bar associations, pro bono legal service programs, private attorneys, and similar persons or entities to increase the availability of free legal services to low income persons residing in New Mexico; or are willing and able to increase and coordinate statewide access to civil legal services to low income persons residing in New Mexico through innovative technology, subject to the limitations on appropriations set forth in 2.40.3.10 NMAC.

[2.40.3.9 NMAC - N, 1/31/2002; A, 7/31/2007]

2.40.3.10 ELIGIBLE SERVICES OR ACTIVITIES: [All disbursements from the fund are for the sole purpose of providing civil legal services to low income persons, except for the annual administrative costs provided to DFA under statute. These services may be provided through the use of technology, as long as no more than fifty percent of any annual expenditures of the fund are used for this purpose. Examples of eligible services include but are not limited to: outreach; community legal education; a legal "hotline"; supportive services for pro se litigants; systems for alternative dispute resolution; utilization of the private bar; representation by staff attorney programs; providing for group representation and advocacy that is not inconsistent with the Lobbyist Regulation Act, NMSA 1978, Sections 2-11-1 through 2-11-9; and system management/substantive support which enables an organization to provide legal services to the poor.] All disbursements from the fund shall be used for the sole purpose of providing civil legal services to low income persons in accordance with the act, except to the extent that any statutory authorized fee for administrative costs shall be paid to DFA. No more than fifty percent of net appropriations (less the required administrative fee to DFA for operation of the civil legal services commission) shall be spent on activities solely directed to adapting innovative technology to increase access to free legal services for low income persons residing in New

Mexico. Appropriations shall only be disbursed to service providers who meet the eligibility requirements set forth in 2.40.3.9 NMAC. Services provided to eligible persons must be in accordance with the New Mexico supreme court access to justice commission civil legal services plan and the critical legal needs of low income persons residing in New Mexico identified in the April 2006 New Mexico supreme court order, including, but not necessarily limited to, housing, consumer, domestic violence, family law, employment, and government benefits issues.

[2.40.3.10 NMAC - N, 1/31/2002; A, 7/31/2007]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 310 HEALTH CARE
PROFESSIONAL SERVICES
PART 13 TELEHEALTH SERVICES**

8.310.13.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[8.310.13.1 NMAC - N, 8/1/07]

8.310.13.2 SCOPE: The rule applies to the general public.

[8.310.13.2 NMAC - N, 8/1/07]

8.310.13.3 STATUTORY AUTHORITY: The New Mexico Medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).

[8.310.13.3 NMAC - N, 8/1/07]

8.310.13.4 DURATION: Permanent

[8.310.13.4 NMAC - N, 8/1/07]

8.310.13.5 EFFECTIVE DATE: August 1, 2007, unless a later date is cited at the end of a section.

[8.310.13.5 NMAC - N, 8/1/07]

8.310.13.6 OBJECTIVE: The objective of these regulations is to provide policies for the service portion of the New Mexico medical assistance programs.

[8.310.13.6 NMAC - N, 8/1/07]

8.310.13.7 DEFINITIONS: [RESERVED]

8.310.13.8 MISSION STATEMENT: The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.

[8.310.13.8 NMAC - N, 8/1/07]

8.310.13.9 TELEHEALTH SERVICES: The New Mexico MAD pays for medically necessary health services furnished to eligible recipients. To help New Mexico eligible recipients receive medically necessary services, MAD pays for covered telehealth services.

[8.310.13.9 NMAC - N, 8/1/07]

8.310.13.10 ELIGIBLE PROVIDERS:

A. Upon approval of a New Mexico medical assistance division provider participation agreement by MAD or its designee, licensed practitioners or facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program policies, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, providers receive instructions on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program policy manuals, billing and utilization review instructions, and other pertinent materials and to obtain answers to questions on or not covered by these materials. To be eligible for reimbursement, a provider is bound by the provisions of the MAD provider participation agreement. Reimbursement for services provided through an interactive telecommunication system can be made when the service is rendered by one of the following providers at an allowed originating sight:

(1) individuals licensed to practice medicine or osteopathy by the New Mexico board of medical examiners or the New Mexico board of osteopathic medical examiners;

(2) podiatrists licensed by the board of podiatry under the state New Mexico;

(3) facilities licensed as diagnos-

tic and treatment centers by the New Mexico department of health (DOH), community mental health centers, core service agencies, hospitals, rural health clinics, school-based health centers, and federally qualified health centers; services performed in these facilities must be furnished by individual practitioners who are enrolled as providers;

(4) individuals licensed as certified nurse practitioners and licensed registered nurses by the New Mexico board of nursing may provide services in collaboration with a physician or as independent providers within the scope of their practice. See Section 61-3-23.2(B)(2) NMSA 1978 (Cum. Supp. 1992);

(5) physician assistants certified by the national commission on certification of physician assistants inc. and licensed by the New Mexico board of medical examiners or New Mexico board of osteopathic medical examiners when furnishing services within the scope of their practice as defined by state law; direction and supervision of physician assistants must be performed by the licensed physicians who are enrolled providers and are approved by the New Mexico board of medical examiners or the New Mexico board of osteopathic medical examiners as supervisory physicians;

(6) nurse midwives licensed by the board of nursing as registered nurses and licensed by the department health as certified nurse midwives;

(7) pharmacist clinicians certified by the New Mexico board of pharmacy may furnish services within the scope of their practice as defined by state law; direction and supervision of pharmacist clinicians must be performed by licensed physicians who are enrolled as providers and are approved by the New Mexico board of medical examiners as supervisory physicians;

(8) individuals licensed as clinical nurse specialists by the New Mexico board of nursing may provide services in collaboration with a physician or as independent providers within the scope of their practice; see NMSA 1978, 61-3-1 to 61-3-30;

(9) psychologists (Ph.D., Psy.D. or Ed.D.) licensed or board eligible as clinical psychologists by the New Mexico board of psychologist examiners;

(10) licensed independent social workers (LISW) licensed by the New Mexico board of social work examiners, licensed professional clinical counselors licensed by, and marriage and family therapists licensed by New Mexico counseling and therapy practice board;

(11) registered dietitians or nutrition professionals when furnishing services within the scope of their practice as defined by state law under the direction of a licensed physician;

(12) Indian health service and tribal 638 facilities;

(13) physical therapists licensed by the physical therapy board under the state of New Mexico regulation and licensing department and meeting licensure requirements of the department of education;

(14) occupational therapist licensed by the board of occupational therapy under the state of New Mexico regulation and licensing department; or

(15) speech pathologists licensed by the board of speech, language, hearing under the state of New Mexico regulation and licensing department;

B. Practices or groups formed by these individuals may receive reimbursement for services when rendered by eligible providers with in the practice or group.

C. When the originating-site is in New Mexico and the distant-site is outside New Mexico, the provider at the distant-site must be licensed for telehealth to the extent required by New Mexico state law and regulations or meet federal requirements for providing services to Indian health service facilities or tribal contract facilities.

[8.310.13.10 NMAC - N, 8/1/07]

8.310.13.11 PROVIDER

RESPONSIBILITIES: A provider who furnishes services to medicaid and other health care program eligible recipients agree to comply with all federal and state laws and regulations relevant to the provision of medical services as specified in the MAD provider participation agreement. A provider also agrees to conform to MAD program policies and instructions as specified in this manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or up-coding services.

[8.310.13.11 NMAC - N, 8/1/07]

8.310.13.12 COVERED SERVICES:

MAD covers services and procedures that are medically necessary for the diagnosis and treatment of an illness or injury as indicated by the eligible recipient's condition. All services must be furnished within the limits of provider program policies and within the scope and practice of the provider's professional standards.

A. The originating-site is the location of an eligible recipient at the time the service is being furnished via an interactive telehealth communications system. An interactive telehealth communication system must include both interactive audio and video and be delivered on a real-

time basis at the originating and distant-sites. Coverage for services rendered through telehealth provided at the originating-site are covered to the same extent the service and the provider are covered when not provided through telehealth. See 8.310.2 NMAC, *Medical Services Providers*, 8.310.8 NMAC, *Mental Health Professional Services*, MAD-758 [8.324.9 NMAC], *Nutrition Services* and 8.325.2 NMAC, *Dialysis Services*.

B. The distant-site is the location where the physician or practitioner is physically located at time of the telehealth service. Coverage of services rendered through telehealth at the distant-site are limited to consultations, evaluation and management services, individual psychotherapy, pharmacologic management, psychiatric diagnostic interview examinations, end stage renal disease related services, and individual medical nutrition services. All services are covered to the same extent the service and the provider are covered when not provided through telehealth. For these services, use of the telehealth communications system fulfills the requirement for a face-to-face encounter. See 8.310.2 NMAC, *Medical Services Providers*, 8.310.8 NMAC, *Mental Health Professional Services*, MAD-758 [8.324.9 NMAC], *Nutrition Services* and 8.325.2 NMAC, *Dialysis Services*.

C. A telehealth originating-site communication system fee is covered if the eligible recipient was present at and participated in the telehealth visit at the an originating-site located in a health professional shortage area (HPSA); a county not classified as a metropolitan statistical area (MSA); a primary medical care health professional shortage area for physicians, nurse practitioners, and physician assistants; primary behavioral health care professional shortage area for psychiatrists and clinical psychologists; a medical specialist shortage area for non-primary care medical specialties; an IHS or tribal 638 facility, a federally qualified health center or rural health clinic or a federal or state telemedicine demonstration project area. An interactive telecommunications system is required as a condition of reimbursement. Allowed originating-sites are an:

- (1) office or clinic of a physician or other practitioner;
- (2) hospital;
- (3) critical access hospital;
- (4) rural health clinic;
- (5) federally qualified health center;
- (6) community mental health center or core service agency;
- (7) school-based health center;
- (8) Indian health services and tribal 638 facilities;
- (9) ambulatory surgical or treat-

ment center;

- (10) skilled nursing facility;
- (11) residential treatment center;
- (12) home health agency;
- (13) diagnostic laboratory or imaging center;
- (14) rehabilitation or other therapeutic health setting; or
- (15) eligible recipient's residence.

D. End stage renal disease (ESRD) related services included in the monthly capitation payment with two or three visits per month and ESRD-related services with four or more visits per month may be paid when provided through a telehealth communications system. However, at least one visit during the month must be furnished by a physician, nurse practitioner, or physician assistant in a face-to-face encounter with the eligible recipient to examine the vascular access site. [8.310.13.12 NMAC - N, 8/1/07]

8.310.13.13 PRIOR AUTHORIZATION AND UTILIZATION

REVIEW: All services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, the provider receives instructions on how to access provider program policies, billing instructions, utilization review instructions, and other pertinent material and to obtain answers to questions on or not covered by these materials. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements.

A. **Prior authorization:** Certain procedures or services can require prior approval from MAD or its authorized agents. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process. A service provided through telehealth is subject to the same prior authorization and utilization review requirements which exist for the service when not provided through telehealth.

B. **Eligibility determination:** Prior authorization of services does not guarantee an individual is eligible for a medicaid or other healthcare program. Providers must verify that an individual is eligible for a specific program at the time services are furnished and must determine if the eligible recipient has other health insurance.

C. **Reconsideration:** Providers who disagree with prior authorization request denials and other review decisions can request a re-review and a reconsideration. See MAD-953 [8.350.2

NMAC], *Reconsideration of Utilization Review Decisions*.

[8.310.13.13 NMAC - N, 8/1/07]

8.310.13.14 NON COVERED SERVICES: A service provided through telehealth is subject to the same program restrictions, limitations and coverage which exist for the service when not provided through telehealth.

[8.310.13.14 NMAC - N, 8/1/07]

8.310.13.15 REIMBURSEMENT: Reimbursement for services at the originating-site and the distant-site are made at the same amount as when the services provided are furnished without the use of a telecommunication system. In addition, reimbursement is made to the originating-site for an interactive telehealth system fee at the lesser of the following:

A. the provider's billed charge; or

B. the maximum allowed by MAD for the specific service or procedure.

(1) The provider's billed charge must be their usual and customary charge for services.

(2) "Usual and customary charge" refers to the amount which the provider charges the general public in the majority of cases for a specific procedure or service.

[8.310.13.15 NMAC - N, 8/1/07]

8.310.13.16 REIMBURSEMENT FOR SERVICES FURNISHED BY INTERNS OR RESIDENTS: Reimbursement for services furnished by interns or residents in hospitals with approved teaching programs or services furnished in other hospitals that participate in teaching programs is made through institutional reimbursement. MAD cannot be billed directly by interns or residents for these services.

[8.310.13.16 NMAC - N, 8/1/07]

HISTORY OF 8.310.13 NMAC:
[RESERVED]

NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION

Repealer: The New Mexico Public Regulation repeals its NMPSC Rule 770, "Procedures for Review of Rates Proposed by Small Water Utilities" (filed 06-30-1988). Effective date of repeal: July 31, 2007.

Repealer: The New Mexico Public Regulation repeals its NMPSC Rule 970,

"Procedures for Review of Rates Proposed by Sewer Utilities Having Annual Operating Revenues Averaging Less Than \$500,000 Over Any Consecutive Three-Year Period" (filed 12-29-1989). Effective date of Repeal: July 31, 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 12 WATER SERVICES PART 770 SMALL WATER UTILITIES

17.12.770.1 ISSUING AGENCY:
New Mexico Public Regulation Commission.

[17.12.770.1 NMAC - Rp, NMPSC Rule 770, 7/31/2007]

17.12.770.2 SCOPE: This part governs the filing and review of changes in rates proposed by small water utilities as defined by Section 62-8-7.1A NMSA 1978 (2005).

A. Exception for 50 percent or more rate increase proposal for small water utilities with 1,500 or fewer service connections. The provisions of 17.12.770.1 NMAC through 17.12.770.16 NMAC shall not apply to small water utilities, as defined by Section 62-8-7.1(B) NMSA 1978, if any of the criterion in Paragraphs (1), (2), (3) or (4) below apply. When any criterion listed below applies, Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC relating to the application for new rates shall apply to the filing and review of a proposed rate or rates by a small water utility.

(1) A proposed rate increase would increase the utility's revenue requirement fifty (50) percent or more over a twelve (12) month period.

(2) A proposed rate increase would increase any rate for any customer class for any given level of consumption fifty (50) percent or more over a twelve (12) month period.

(3) A utility proposes to increase a seasonally-adjusted rate and that increase would result in an increase in the rate of fifty (50) percent or more.

(4) A utility proposes to institute a rate where no rate had existed previously.

B. Exception for more than an 8 percent rate increase proposal for small water utilities with more than 1,500 but less than 5,000 service connections. The provisions of 17.12.770.1 NMAC through 17.12.770.16 NMAC shall

not apply to small water utilities, as defined by Section 62-8-7.1A NMSA 1978, if any of the criterion in Paragraphs (1), (2), (3) or (4) below apply. When any criterion listed below applies, Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC relating to application for new rates shall apply to the filing and review of a proposed rate or rates by a small water utility.

(1) A proposed rate increase would increase the utility's revenue requirement by more than eight percent (8%) over a twelve (12) month period.

(2) A proposed rate increase would increase any rate for any customer class for any given level of consumption by more than eight (8) percent over a twelve (12) month period.

(3) A utility proposes to increase a seasonally-adjusted rate and that increase would result in an increase in the rate of more than eight (8) percent over a twelve (12) month period.

(4) A utility proposes to institute a rate where no rate had existed previously.

C. A rate application by a small water utility shall comply with the provisions of 17.1.2.53 NMAC if any of the criteria listed in 17.12.770.2 NMAC applies.

[17.12.770.2 NMAC - Rp, NMPSC Rule 770.3, 7/31/2007]

17.12.770.3 STATUTORY AUTHORITY: Sections 8-8-4, 62-3-1, 62-3-2.1, 62-3-4, 62-6-4, 62-8-3, 62-8-7 and 62-8-7.1 NMSA 1978.

[17.12.770.3 NMAC - Rp, NMPSC Rule 770.3, 7/31/2007]

17.12.770.4 DURATION:
Permanent.

[17.12.770.4 NMAC - N, 7/31/2007]

17.12.770.5 EFFECTIVE DATE:
July 31, 2007, unless a later date is cited at the end of a section.

[17.12.770.5 NMAC - Rp, NMPSC Rule 770, 7/31/2007]

17.12.770.6 OBJECTIVE: The purpose of 17.12.770 NMAC is to carry out the explicit legislative intent of Sections 62-3-2.1 and 62-8-7.1 NMSA 1978, as amended, to limit governmental regulation of rate setting by small water utilities and to provide a degree of regulatory oversight of small water utilities that is proportionate to the need and benefit of such regulation.

[17.12.770.6 NMAC - Rp, NMPSC Rule 770.1, 7/31/2007]

17.12.770.7 DEFINITIONS: In addition to the definitions in 17.12.1.7 NMAC, certain terms as used in this rule are defined as follows.

A. Advice notice means a listing by a water utility of proposed changes in tariff schedules and proposed effective dates that has been provided to the public and filed with the commission.

B. Operating district or division means any area of utility operations which is geographically distinct and distant from other utility operations, and which would otherwise be operated as a separate stand-alone utility but for its classification as a business unit within the single utility.

C. Rate shall have the meaning given in Section 62-3-3H NMSA 1978.

D. Ratepayer means a person in whose name service is carried. As stated in Section 62-8-7.1A NMSA 1978 "each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer."

E. Small water utility means a public utility as defined in Sections 62-3-3G(3) NMSA 1978 with less than an aggregate of five thousand (5,000) service connections in any utility operating district or division in New Mexico averaged over the previous three (3) consecutive years. [17.12.770.7 NMAC - N, 7/31/2007]

17.12.770.8 PROCEDURES FOR 2% RATE CHANGE WITHOUT HEARING:

A. A small water utility may adjust its commodity charge and customer service charge by up to two percent (2%) in any calendar year without a hearing, provided that the utility:

- (1) is in good standing with all applicable commission rules and orders;
- (2) shall not have changed its rates in the prior twelve (12) month period;
- (3) shall have given notice to its customers by a mailed bill insert, printed notice on a bill or separate mailing of its proposed rate adjustment at least thirty (30) days prior to the effective date of such rate adjustment, in accordance with 17.12.770.10 NMAC; and
- (4) shall not make such rate adjustments effective until at least thirty (30) days after it has filed with the commission the required documents described in Subsection B below.

B. Filing requirements. The utility shall submit with its filing:

- (1) an advice notice, including proposed rate schedules, notifying the commission of the utility's intent to implement the new rate or rates by a date certain, which may not be less than thirty (30) days after the filing of the advice notice; the advice notice shall conform to 17.1.210.9 NMAC;
- (2) an affidavit describing how the notice required by 17.12.770.8 NMAC

was given to the utility's ratepayers; and

(3) a copy of the notice, which shall be attached to the affidavit.

C. Applicability of certain rules. 17.12.770.10 NMAC applies to proposed two percent (2%) rate changes made pursuant to this section. 17.12.770.9 NMAC and 17.12.770.11 NMAC through 17.12.770.18 NMAC are not applicable to proposed two percent (2%) rate changes made pursuant to this section. The utility's filing under 17.12.770.8 NMAC shall be in accordance with 17.1.210 NMAC, except that Paragraph (2) of Subsection B of 17.1.210.11 NMAC relating to direct testimony and exhibits shall not apply, and Subsection C of 17.1.210.11 NMAC relating to additional information shall not apply.

[17.12.770.8 NMAC - Rp, NMPSC Rule 770.4, 7/31/2007]

17.12.770.9 FILINGS BY SMALL WATER UTILITIES PROPOSING NEW RATES:

A. This section applies to the filing and review of changes in rates proposed by small water utilities except small water utilities filing for a two percent (2%) rate change under 17.12.770.8 NMAC that have given proper notice according to 17.12.770.10 NMAC and small water utilities subject to the exceptions in 17.12.770.2 NMAC.

B. Filing requirements. The utility shall submit with its filing:

- (1) an advice notice notifying the commission of the utility's intent to implement the new rate or rates by a date certain, which may not be less than thirty (30) days after the filing of the advice notice;
- (2) an affidavit describing how the notice required by 17.12.770.10 NMAC has been given to the utility's ratepayers;
- (3) a copy of the notice required by 17.12.770.10 NMAC attached to the affidavit of notice;
- (4) a statement of the total number of ratepayers being served by the utility at the time of the filing;
- (5) a brief statement explaining what has caused the need for the rate adjustment; and
- (6) a statement that contains a rate and billing analysis.

C. Required rate and billing analysis. The rate and billing analysis shall describe the effect of any proposed rate increase on each class of customers and shall include: a description of any proposed changes in rate design; a comparison of each proposed rate with the existing rate for each customer class; a table that provides a billing analysis for residential customers and a table that provides a rate analysis for each customer class.

- (1) The rate comparison shall

state each proposed rate and each existing rate for each customer class, the percentage difference between each proposed rate and each existing rate and the number of customers within each customer class to which each change applies.

(2) The table that provides the billing analysis for residential customers shall state the present bill, the anticipated bill under the proposed rates and the percentage difference between the two bills for the following levels of consumption: 0 gallons, 1,000 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, 30,000 gallons, 35,000 gallons, 40,000 gallons, 45,000 gallons and 50,000 gallons.

(3) The table that provides the rate analysis for each customer class shall be based on each level of consumption listed in Paragraph (2) above. The table shall be based on the month of highest overall consumption in the twelve (12) months preceding the filing of the notice to ratepayers. The table shall show the number of customers and the present and proposed bill for each level of consumption, rounding gallons per month to the nearest one thousand (1,000) gallons. For example, for the six thousand (6,000) gallon level, the utility will show the number of customers with usage of five thousand five hundred and one (5,501) to six thousand five hundred (6,500) gallons. If consumption is measured in units other than thousands of gallons, the utility shall convert their billing units to thousands of gallons. If there were no customers at a particular level of consumption, the utility shall list a zero in the table for that level of consumption.

D. Applicability of 17.1.210 NMAC. The utility's filings under 17.12.770.9 NMAC shall be in accordance with 17.1.210 NMAC, except that Paragraph (2) of Subsection B of 17.1.210.11 NMAC relating to direct testimony and exhibits and Subsection C of 17.1.210.11 NMAC relating to additional information shall not be applicable. The utility may, but is not required to file with the advice notice, the direct testimony, exhibits, and statements which would be required by 17.12.770.15 NMAC in the event of a valid protest or motion to review by commission staff.

E. Rejection. Failure to abide by these requirements shall be deemed grounds for rejection of the filing.

F. Effective date of rates. The rate or rates proposed in accordance with the provisions of this section shall become effective on the date set forth in the advice notice unless a protest is filed under 17.12.770.12 NMAC, or a staff motion for review is filed under 17.12.770.11 NMAC

and the commission determines the protest or motion establishes just cause for reviewing the proposed rates. If a valid protest or motion is filed and the commission determines that there is just cause for review of the proposed rates, the new rates may become effective only in accordance with Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC.

G. Rates effective by operation of law. Rates that become effective by operation of law, without hearing by the commission, shall not be construed to bear the approval of the commission and may be subject to inquiry by the commission at any time.

[17.12.770.9 NMAC - Rp, NMPSC Rule 770.4, 7/31/2007]

17.12.770.10 NOTICE TO RATEPAYERS PRIOR TO FILING OF PROPOSED RATES:

A. Notice required. At least sixty (60) days prior to filing with the commission a schedule proposing a change in rate or rates, a small water utility shall notify its ratepayers of the proposed rate or rates in writing. The utility may mail the notice to ratepayers either with their billings or independently.

B. Required information. The notice to ratepayers shall include the following information:

(1) the amount of the increase requested in both total dollar amounts and total percentage increases;

(2) the customer classifications to which the new rate or rates would apply;

(3) a comparison of the present rate with proposed rates, consisting of

(a) the present rate,

(b) the proposed rate,

(c) the percentage difference between the present and proposed rate for each customer class and

(d) the number of customers in each class to which the proposed rates would apply;

(4) the date on which the utility intends to file with the commission the advice notice proposing the change in rate or rates;

(5) a statement that the utility will promptly notify a ratepayer of the date on which it actually files with the commission the advice notice proposing the change in rate or rates, if the ratepayer so requests;

(6) a statement in all capital letters that if a hearing is held by the public regulation commission, any costs incurred by the utility may be included in the utility's future rates, following the utility's next rate case;

(7) a statement that procedures for protesting rates are set forth in 17.12.770 NMAC, a copy of which can be

obtained upon request from, or inspected at, the main office of the utility or the offices of the utility division of the commission in Santa Fe, and that forms for protests are available from either the utility or the commission, and indicating the telephone numbers and addresses of both the utility and the commission;

(8) a statement that the rate filing together with any exhibits and related papers may be examined at the main offices of the utility or at the commission in Santa Fe;

(9) a statement that further information may be obtained by contacting either the utility or the commission; and

(10) a statement that, for purposes of protests, "ratepayer" means a person in whose name service is carried. For purposes of protests, under Section 62-8-7.1 NMSA 1978, "each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer."

C. Billing analysis for residential customer required. The notice to ratepayers shall include a chart that provides a billing analysis for residential customers clearly showing the present rates, the proposed rates, and the percentage difference between the present bill and the anticipated bill for each of the following levels of consumption (if consumption is measured in units other than thousands of gallons the utility shall convert their billing units to thousands of gallons) - 0 gallons, 1,000 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, 30,000 gallons, 35,000 gallons, 40,000 gallons, 45,000 gallons and 50,000 gallons;

D. If the utility has one thousand five hundred (1,500) or fewer service connections in any operating district or division, averaged over the previous three (3) consecutive years, the notice to ratepayers shall include a statement that the new rate or rates will go into effect automatically and will not be subject to review and hearing by the commission unless ratepayers file a protest conforming to the requirements of 17.12.770.12 NMAC.

E. If the utility has more than one thousand five hundred (1,500), but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) years, the notice to ratepayers shall include a statement that the new rate or rates will go into effect automatically and will not be subject to review and hearing by the commission unless commission staff files a motion for review or ratepayers file a protest conforming to the requirements of

17.12.770.12 NMAC.

F. Prior approval of notice form. The utility shall submit a copy of the form notice to the utility division staff for approval at least fifteen (15) days prior to giving notice to ratepayers. If the commission does not disapprove of the form of notice within five (5) business days of submission of the notice, the form will be deemed approved.

G. Rejection. Failure to comply with this section shall be deemed grounds for rejection of the filing proposing a change in rate or rates.

[17.12.770.10 NMAC - Rp, NMPSC Rule 770.5, 7/31/2007]

17.12.770.11 STAFF MOTION FOR COMMISSION REVIEW OF RATE PROPOSALS:

A. Suspension of rates upon filing of staff motion. Rates proposed under 17.12.770 NMAC by a utility with more than one thousand five hundred (1,500) but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) consecutive years, shall be subject to suspension, review and hearing by the commission upon the timely filing with the commission of a staff motion for review.

B. Timing of staff motion. A staff motion for review shall be filed with the commission no later than twenty (20) days after the utility files with the commission the advice notice proposing the change in rate or rates.

C. Full review upon staff motion. Upon the timely filing of a staff motion and after a commission determination that just cause exists to review the proposed rates or rates, the commission will conduct a full review of the proposed rate or rates under Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC and under either 17.12.730 NMAC or 17.12.780 NMAC.

[17.12.770.11 NMAC - N, 7/31/2007]

17.12.770.12 PROTESTS BY RATEPAYERS:

A. Suspension of rates upon filing of protest. Rates proposed by a small water utility under 17.12.770 NMAC will be subject to suspension, review, and hearing by the commission upon the timely filing with the commission of a protest.

B. For a utility with one thousand five hundred (1,500) or fewer service connections in any operating district or division, averaged over the previous three (3) consecutive years, a protest must be signed by ten (10) percent, or more, of the utility's ratepayers, or twenty-five (25) ratepayers, whichever is more, receiving service from the utility at the time the

change in rate or rates is filed. For purposes of this rule, ratepayer is defined in 17.12.770.7 NMAC.

C. For a utility with more than one thousand five hundred (1,500) but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) consecutive years, a protest must be signed by ten (10) percent or more of the ratepayers receiving service from the utility at the time the change in rate or rates is filed. For purposes of this rule, ratepayer is defined in 17.12.770.7 NMAC.

D. Timing of protest. Protests shall be filed with the commission no later than twenty (20) days after the utility files with the commission the advice notice proposing the change in rate or rates, and shall conform to the requirements of 17.12.770.13 NMAC.

E. Full review upon protest. Upon the filing of a protest under 17.12.770.12 NMAC and after a commission determination that just cause exists to review the proposed rate or rates, the commission will conduct a full review of the proposed rate or rates under Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC and under either 17.12.730 NMAC or 17.12.780 NMAC.

[17.12.770.12 NMAC - Rp, NMPSC Rule 770.6, 7/31/2007]

17.12.770.13 FORM AND FILING OF PROTEST:

A. Contents of protest. Protest petitions to the commission shall be in writing, and signed by each of the ratepayers submitting the protest. All protests shall contain the following:

(1) the name of the utility whose proposed rates are being protested and identification of the rate or rates being protested;

(2) the name, mailing address, and phone number of each ratepayer protesting the proposed rates and the name, mailing address, and phone number of each ratepayer's attorney, if any; and

(3) a caption of the proceeding, a space for the docket number, and the title "Protest."

B. Format. Whenever possible, protests shall be typed, double-spaced, and shall be on paper 8 1/2 inches wide and 11 inches long and fastened only to the left side.

C. Use of commission form. Protestants may use, but are not required to use, the commission's form for protests. The utility shall make copies of the commission's form available to its ratepayers upon request.

D. Additional information permitted. Protestants are strongly encouraged, but are not required, to file with the protest a statement or statements of

their reasons for protesting the proposed rates as well as any data, exhibits, illustrations, prepared testimony, or written argument which may aid the commission in its determination of whether just cause exists to review the rates.

E. Certificate of service. The protestants shall serve copies of the protest and any accompanying documents on the utility whose proposed rates are being protested either by first class U.S. mail or by hand delivery. A certificate of service stating the date and manner of mailing or delivery shall be included in or attached to the protest at the time of filing with the commission.

F. Number of copies required. The protestants shall provide the commission with an original plus ten (10) copies of the protest and any accompanying documents at the time of filing unless the commission directs otherwise.

G. Date of filing. If a protest is submitted to the commission before the utility has filed the change in rate or rates, the protest shall be deemed filed as of the date of the utility's filing.

H. Ratepayers' status. Ratepayers who have submitted a protest under 17.12.770.13 NMAC will be deemed parties to any protest proceeding, but will not be deemed parties to a rate review proceeding.

[17.12.770.13 NMAC - Rp, NMPSC Rule 770.7, 7/31/2007]

17.12.770.14 RESPONSE TO PROTEST:

A. Response with leave of commission. No response to the substance of a protest filed with the commission is permitted except by leave of the commission or hearing examiner.

B. Challenge to validity of protest petition. The utility whose proposed rates are being protested may challenge the validity of the protest petition within ten (10) days of the filing of the petition.

(1) The challenge shall be made by motion conforming with the requirements of 17.1.2 NMAC and served upon each of the protestants.

(2) The motion shall be accompanied by affidavits and a brief in support of the motion, which shall also be served upon the protestants.

C. Protestants to establish validity of protest petition. If a protest is challenged by motion of the utility made in accordance with 17.12.770.14 NMAC, the commission or hearing examiner may direct the protestants to verify their status as ratepayers of the utility or otherwise establish the validity of the protest petition.

D. Invalid protest peti-

tions. If the commission or hearing examiner determines that the protest petition is invalid, the commission or hearing examiner shall take such action as is deemed appropriate, including, but not limited to, dismissal of the protest.

E. Ruling on protest. The commission shall determine the validity of any challenged protest prior to a commission determination that just cause exists to review the proposed rate or rates.

[17.12.770.14 NMAC - Rp, NMPSC Rule 770.8, 7/31/2007]

17.12.770.15 COMMISSION REVIEW OF RATES AFTER JUST CAUSE DETERMINATION:

A. Notice of hearing. Once the commission determines that just cause exists to review the proposed rate or rates, the commission shall issue an order noticing the rate or rates for hearing. Either this order or a subsequent order shall prescribe:

(1) the manner of any further notice to customers or the public, the cost of which shall be borne by the utility;

(2) a deadline for the filing of motions to intervene under 17.1.2 NMAC and directions to any protestants that they that they will not be considered parties to the rate review proceeding unless they move for and are granted intervener status; and

(3) directions to parties other than the utility and, to the extent the commission or hearing examiner may deem helpful, directions to the commission staff to file written testimony and exhibits.

B. Service of notice: The commission or hearing examiner shall mail copies of all orders issued under 17.12.770.15 NMAC to each protestant whether or not the protestant has sought or been granted intervener status.

[17.12.770.15 NMAC - Rp, NMPSC Rule 770.10, 7/31/2007]

17.12.770.16 SUBMISSION OF WRITTEN TESTIMONY AND EXHIBITS BY UTILITY:

A. Information to be submitted upon commission determination of just cause. After a commission determination of just cause for review of the proposed rate or rates, the utility shall file the following information and documents with the commission within thirty (30) days unless the commission or hearing examiner directs otherwise:

(1) direct testimony and exhibits intended to be introduced into evidence in support of the proposed rate or rates, including any rate filing package required by commission rule or order and by 17.12.730 NMAC or 17.12.780 NMAC;

(2) a concise statement, supported

by the direct testimony and exhibits, identifying:

(a) when the utility proposes to change the ratemaking treatment upon which the present rates are based, each proposed change, the reasons for the proposed change, and the impact in dollars of the proposed change on the rates being requested;

(b) the compound annual growth rate of each account of plant and expenditures since the test period used in the utility's last rate filing; and

(c) any extraordinary event or circumstance, known or projected, which materially alters the utility's operating or financial condition from the condition existing during the utility's test period in its last rate case; and

(3) a concise statement setting forth the utility's compliance or failure to comply with each part of the commission's final order in each of the utility's cases decided during the preceding five (5) years and its compliance or failure to comply with 17.6.450 NMAC and 17.1.2 NMAC through 17.12.780 NMAC.

B. Copies. The utility shall provide the commission with an original plus five (5) copies of all documents filed pursuant to subsection A, unless the commission or hearing examiner directs otherwise.

[17.12.770.16 NMAC - Rp, NMPSC Rule 770.9, 7/31/2007]

17.12.770.17 STATUS OF PROTESTANTS DURING PROCEEDING:

The protestants who file a protest will be deemed parties to any proceeding on a motion made by the utility under 17.12.770.14 NMAC but will not be deemed parties to the proceeding to review and hear the proposed rate or rates. Protestants may individually move to intervene under 17.1.2 NMAC and may or may not be granted intervenor status under that rule. The commission or hearing examiner may limit the number of intervenors in the rate making proceeding to avoid unnecessary delay, duplication, or expense.

[17.12.770.11 NMAC - N, 7/31/2007]

HISTORY OF 17.12.770 NMAC:

Pre-NMAC History. The material in this part was derived from that previously filed with the commission of public records-state records center and archives.

GO 48, Order Adopting Interim Rule, Interim General Order No. 48 Procedures for Review of Rates Proposed by Small Water Utilities Exhibit A, filed 1/8/1986.

GO 48, Procedures for Review of Rates Proposed by Small Water Utilities, filed 3/6/1986.

GO 48, Procedures for Review of Rates Proposed by Small Water Utilities, filed

10/19/1987.

NMPSC Rule 770, Procedures for Review of Rates Proposed by Small Water Utilities, filed 6/30/1988.

History of Repealed Material.

NMPSC Rule 770, Procedures for Review of Rates Proposed by Small Water Utilities (filed 6/30/1988) repealed 7/31/2007.

Other History.

NMPSC Rule 770, Procedures for Review of Rates Proposed by Small Water Utilities (filed 6/30/1988) replaced by 17.12.77 NMAC, Small Water Utilities, effective 7/31/2007.

NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 13 SEWER SERVICES PART 970 SMALL SEWER UTILITIES

17.13.970.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[17.13.970.1 NMAC - Rp, NMPSC Rule 970, 7/31/2007]

17.13.970.2 SCOPE: This part governs the filing and review of changes in rates proposed by small sewer utilities as defined by Section 62-8-7.1A NMSA 1978 (2005).

A. Exception for 50 percent or more rate increase proposal for small sewer utilities with 1,500 or fewer service connections. The provisions of 17.13.970.1 NMAC through 17.13.970.16 NMAC shall not apply to small sewer utilities, as defined by Section 62-8-7.1A NMSA 1978, if any of the criterion in Paragraphs (1), (2), (3) or (4) below apply. When any criterion listed below applies, Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC relating to the application for new rates shall apply to the filing and review of a proposed rate or rates by a small sewer utility.

(1) A proposed rate increase would increase the utility's revenue requirement fifty (50) percent or more over a twelve (12) month period.

(2) A proposed rate increase would increase any rate for any customer class for any given level of consumption fifty (50) percent or more over a twelve (12) month period.

(3) A utility proposes to increase a seasonally-adjusted rate and that increase

would result in an increase in the rate of fifty (50) percent or more.

(4) A utility proposes to institute a rate where no rate had existed previously.

B. Exception for more than an 8 percent rate increase proposal for small sewer utilities with more than 1,500 but less than 5,000 service connections. The provisions of 17.13.970.1 NMAC through 17.13.970.16 NMAC shall not apply to small sewer utilities, as defined by Section 62-8-7.1A NMSA 1978, if any of the criterion in Paragraphs (1), (2), (3) or (4) below apply. When any criterion listed below applies, Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC relating to application for new rates shall apply to the filing and review of a proposed rate or rates by a small sewer utility.

(1) A proposed rate increase would increase the utility's revenue requirement by more than eight (8) percent over a twelve (12) month period.

(2) A proposed rate increase would increase any rate for any customer class for any given level of consumption by more than eight (8) percent over a twelve (12) month period.

(3) A utility proposes to increase a seasonally-adjusted rate and that increase would result in an increase in the rate of more than eight (8) percent over a twelve (12) month period.

(4) A utility proposes to institute a rate where no rate had existed previously.

C. A rate application by a small sewer utility shall comply with the provisions of 17.1.2.53 NMAC if any of the criteria listed in 17.13.970.2 NMAC applies.

[17.13.970.2 NMAC - Rp, NMPSC Rule 970, 7/31/2007]

17.13.970.3 STATUTORY AUTHORITY: Sections 8-8-4, 62-3-1, 62-3-2.1, 62-3-4, 62-6-4, 62-8-3, 62-8-7 and 62-8-7.1 NMSA 1978.

[17.13.970.3 NMAC - Rp, NMPSC Rule 970.2, 7/31/2007]

17.13.970.4 DURATION: Permanent.

[17.13.970.4 NMAC - N, 7/31/2007]

17.13.970.5 EFFECTIVE DATE: July 31, 2007, unless a later date is cited at the end of a section.

[17.13.970.5 NMAC - Rp, NMPSC Rule 970, 7/31/2007]

17.13.970.6 OBJECTIVE: The purpose of 17.13.970 NMAC is to carry out the explicit legislative intent of Sections 62-3-2.1 and 62-8-7.1 NMSA 1978, as amended, to limit governmental regulation of rate setting by small sewer utilities and to pro-

vide a degree of regulatory oversight of small sewer utilities that is proportionate to the need and benefit of such regulation.

[17.13.970.6 NMAC - Rp, NMPSC Rule 970.1, 7/31/2007]

17.13.970.7 DEFINITIONS: In addition to the definitions in 17.12.1.7 NMAC, certain terms as used in this rule are defined as follows.

A. Advice notice means a listing by a sewer utility of proposed changes in tariff schedules and proposed effective dates that has been provided to the public and filed with the commission.

B. Operating district or division means any area of utility operations which is geographically distinct and distant from other utility operations, and which would otherwise be operated as a separate stand-alone utility but for its classification as a business unit within the single utility.

C. Rate shall have the meaning given in Section 62-3-3H NMSA 1978.

D. Ratepayer means a person in whose name service is carried. As stated in Section 62-8-7.1A NMSA 1978 "each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer."

E. Small sewer utility means a public utility as defined in Sections 62-3-3G53) NMSA 1978 with less than an aggregate of five thousand (5,000) service connections in any utility operating district or division in New Mexico averaged over the previous three (3) consecutive years. [17.13.970.7 NMAC - Rp, NMPSC Rule 970.3, 7/31/2007]

17.13.970.8 PROCEDURES FOR 2 PERCENT RATE CHANGE WITHOUT HEARING:

A. A small sewer utility may adjust its commodity charge and customer service charge by up to two (2) percent in any calendar year without a hearing, provided that the utility:

(1) is in good standing with all applicable commission rules and orders;

(2) shall not have changed its rates in the prior twelve (12) month period;

(3) shall have given notice to its customers by a mailed bill insert, printed notice on a bill or separate mailing of its proposed rate adjustment at least thirty (30) days prior to the effective date of such rate adjustment, in accordance with 17.13.970.10 NMAC; and

(4) shall not make such rate adjustments effective until at least thirty (30) days after it has filed with the commission the required documents described in Subsection B below.

B. Filing requirements.

The utility shall submit with its filing:

(1) an advice notice, including proposed rate schedules, notifying the commission of the utility's intent to implement the new rate or rates by a date certain, which may not be less than thirty (30) days after the filing of the advice notice; the advice notice shall conform to 17.1.210.9 NMAC;

(2) an affidavit describing how the notice required by 17.13.970.10 NMAC was given to the utility's ratepayers; and

(3) a copy of the notice, which shall be attached to the affidavit.

C. Applicability of certain rules. 17.13.970.10 NMAC applies to proposed two (2) percent rate changes made pursuant to this section. 17.13.970.9 NMAC and 17.12.970.11 NMAC through 17.12.970.16 NMAC are not applicable to proposed two (2) percent rate changes made pursuant to this section. The utility's filing under 17.13.970.8 NMAC shall be in accordance with 17.1.210 NMAC, except that Paragraph 2 of Subsection B of 17.1.210.11 NMAC relating to direct testimony and exhibits shall not apply, and Subsection C of 17.1.210.11 NMAC relating to additional information shall not apply. [17.13.970.8 NMAC - Rp, NMPSC Rule 970.4, 7/31/2007]

17.13.970.9 FILINGS BY SMALL SEWER UTILITIES PROPOSING NEW RATES:

A. This section applies to the filing and review of changes in rates proposed by small sewer utilities except small sewer utilities filing for a two (2) percent rate change under 17.13.970.8 NMAC that have given proper notice according to 17.13.970.10 NMAC and small sewer utilities subject to the exceptions in 17.13.970.2 NMAC.

B. Filing requirements.

The utility shall submit with its filing:

(1) an advice notice notifying the commission of the utility's intent to implement the new rate or rates by a date certain, which may not be less than thirty (30) days after the filing of the advice notice;

(2) an affidavit describing how the notice required by 17.13.970.10 NMAC has been given to the utility's ratepayers;

(3) a copy of the notice required by 17.12.970.10 NMAC attached to the affidavit;

(4) a statement of the total number of ratepayers being served by the utility at the time of the filing;

(5) a brief statement explaining what has caused the need for the rate adjustment; and

(6) a statement that contains a rate and billing analysis.

C. Required rate and billing analysis. The rate and billing analy-

sis shall describe the effect of any proposed rate increase on each class of customers and shall include: a description of any proposed changes in rate design; a comparison of each proposed rate with the existing rate for each customer class; a table that provides a billing analysis for residential customers and a table that provides a rate analysis for each customer class.

(1) The rate comparison shall state each proposed rate and each existing rate for each customer class, the percentage difference between each proposed rate and each existing rate and the number of customers within each customer class to which each change applies.

(2) The table that provides the billing analysis for residential customers shall state the present bill, the anticipated bill under the proposed rates and the percentage difference between the two bills for the following levels of consumption: 0 gallons, 1,000 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, 30,000 gallons, 35,000 gallons, 40,000 gallons, 45,000 gallons and 50,000 gallons.

(3) The table that provides the rate analysis for each customer class shall be based on each level of consumption listed in Paragraph (2) above. The table shall be based on the month of highest overall consumption in the twelve (12) months preceding the filing of the notice to ratepayers. The table shall show the number of customers and the present and proposed bill for each level of consumption, rounding gallons per month to the nearest one thousand (1,000) gallons. For example, for the six thousand (6,000) gallon level, the utility will show the number of customers with usage of five thousand five hundred and one (5,501) to six thousand five hundred (6,500) gallons. If consumption is measured in units other than thousands of gallons, the utility shall convert their billing units to thousands of gallons. If there were no customers at a particular level of consumption, the utility shall list a zero in the table for that level of consumption.

D. Applicability of 17.1.210 NMAC. The utility's filings under 17.13.970.9 NMAC shall be in accordance with 17.1.210 NMAC, except that Paragraph 2 of Subsection B of 17.1.210.11 NMAC relating to direct testimony and exhibits and Subsection C of 17.1.210.11 NMAC relating to additional information shall not be applicable. The utility may, but is not required to file with the advice notice, the direct testimony, exhibits, and statements which would be required by 17.13.970.16 NMAC in the event of a commission determination of just cause for review of the proposed rates.

E. Rejection. Failure to abide by these requirements shall be deemed grounds for rejection of the filing.

F. Effective date of rates. The rate or rates proposed in accordance with the provisions of this section shall become effective on the date set forth in the advice notice unless a protest is filed under 17.13.970.12 NMAC, or a staff motion for review is filed under 17.13.970.11 NMAC and the commission determines the protest or motion establishes just cause for reviewing the proposed rates. If a valid protest or motion is filed and the commission determines that there is just cause for review of the proposed rates, the new rates may become effective only in accordance with Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC.

G. Rates effective by operation of law. Rates that become effective by operation of law, without hearing by the commission, shall not be construed to bear the approval of the commission and may be subject to inquiry by the commission at any time.
[17.13.970.9 NMAC - Rp, NMPSC Rule 970.4, 7/31/2007]

17.13.970.10 NOTICE TO RATEPAYERS PRIOR TO FILING OF PROPOSED RATES:

A. Notice required. At least sixty (60) days prior to filing with the commission a schedule proposing a change in rate or rates, a small sewer utility shall notify its ratepayers of the proposed rate or rates in writing. The utility may mail the notice to ratepayers either with their billings or independently.

B. Required information. The notice to ratepayers shall include the following information:

(1) the amount of the increase requested in both total dollar amounts and total percentage increases;

(2) the customer classifications to which the new rate or rates would apply;

(3) a comparison of the present rate with proposed rates, consisting of

(a) the present rate,

(b) the proposed rate,

(c) the percentage difference between the present and proposed rate for each customer class and

(d) the number of customers in each class to which the proposed rates would apply;

(4) the date on which the utility intends to file with the commission the advice notice proposing the change in rate or rates;

(5) a statement that the utility will promptly notify a ratepayer of the date on which it actually files with the commission the advice notice proposing the change in

rate or rates, if the ratepayer so requests;

(6) a statement in all capital letters that if a hearing is held by the public regulation commission, any costs incurred by the utility may be included in the utility's future rates, following the utility's next rate case;

(7) a statement that procedures for protesting rates are set forth in 17.13.970 NMAC, a copy of which can be obtained upon request from, or inspected at, the main office of the utility or the offices of the utility division of the commission in Santa Fe, and that forms for protests are available from either the utility or the commission, and indicating the telephone numbers and addresses of both the utility and the commission;

(8) a statement that the rate filing together with any exhibits and related papers may be examined at the main offices of the utility or at the commission in Santa Fe;

(9) a statement that further information may be obtained by contacting either the utility or the commission; and

(10) a statement that, for purposes of protests, "ratepayer" means a person in whose name service is carried. For purposes of protests, under Section 62-8-7.1 NMSA 1978, "each person who receives a separate bill equals one ratepayer and each person who receives multiple bills equals one ratepayer."

C. Billing analysis for residential customer required. The notice to ratepayers shall include a chart that provides a billing analysis for residential customers clearly showing the present rates, the proposed rates, and the percentage difference between the present bill and the anticipated bill for each of the following levels of consumption (if consumption is measured in units other than thousands of gallons the utility shall convert their billing units to thousands of gallons) - 0 gallons, 1,000 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, 30,000 gallons, 35,000 gallons, 40,000 gallons, 45,000 gallons and 50,000 gallons.

D. If the utility has one thousand five hundred (1,500) or fewer service connections in any operating district or division, averaged over the previous three (3) consecutive years, the notice to ratepayers shall include a statement that the new rate or rates will go into effect automatically and will not be subject to review and hearing by the commission unless ratepayers file a protest conforming to the requirements of 17.13.970.12 NMAC.

E. If the utility has more than one thousand five hundred (1,500), but

less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) years, the notice to ratepayers shall include a statement that the new rate or rates will go into effect automatically and will not be subject to review and hearing by the commission unless commission staff files a motion for review or ratepayers file a protest conforming to the requirements of 17.13.970.12 NMAC.

F. Prior approval of notice form. The utility shall submit a copy of the form notice to the utility division staff for approval at least fifteen (15) days prior to giving notice to ratepayers. If the commission does not disapprove of the form of notice within five (5) business days of submission of the notice, the form will be deemed approved.

G. Rejection. Failure to comply with this section shall be deemed grounds for rejection of the filing proposing a change in rate or rates.

[17.13.970.10 NMAC - Rp, NMPSC Rule 970.5, 7/31/2007]

17.13.970.11 STAFF MOTION FOR COMMISSION REVIEW OF RATE PROPOSALS:

A. Suspension of rates upon filing of staff motion. Rates proposed under 17.13.970 NMAC by a utility with more than one thousand five hundred (1,500) but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) consecutive years, shall be subject to suspension, review and hearing by the commission upon the timely filing with the commission of a staff motion for review.

B. Timing of staff motion. A staff motion for review shall be filed with the commission no later than twenty (20) days after the utility files with the commission the advice notice proposing the change in rate or rates.

C. Full review upon staff motion. Upon the timely filing of a staff motion and after a commission determination that just cause exists to review the proposed rates or rates, the commission will conduct a full review of the proposed rate or rates under Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC and under either 17.13.930 NMAC or 17.13.980 NMAC.
[17.13.970.13 NMAC - N, 7/31/2007]

17.13.970.12 PROTESTS BY RATEPAYERS:

A. Suspension of rates upon filing of protest. Rates proposed by a small sewer utility under 17.13.970 NMAC will be subject to suspension, review, and hearing by the commission upon the timely filing with the commission

of a protest.

B. For a utility with one thousand five hundred (1,500) or fewer service connections in any operating district or division, averaged over the previous three (3) consecutive years, a protest must be signed by ten (10) percent or more of the utility's ratepayers, or twenty-five (25) ratepayers, whichever is more, receiving service from the utility at the time the change in rate or rates is filed. For purposes of this rule, ratepayer is defined in 17.13.970.7 NMAC.

C. For a utility with more than one thousand five hundred (1,500) but less than five thousand (5,000) service connections in any operating district or division, averaged over the previous three (3) consecutive years, a protest must be signed by ten (10) percent or more of the ratepayers receiving service from the utility at the time the change in rate or rates is filed. For purposes of this rule, ratepayer is defined in 17.13.970.7 NMAC.

D. Timing of protest. Protests shall be filed with the commission no later than twenty (20) days after the utility files with the commission the advice notice proposing the change in rate or rates and shall conform to the requirements of 17.13.970.13 NMAC.

E. Full review upon protest. Upon the filing of a protest under 17.13.970.12 NMAC and after a commission determination that just cause exists to review the proposed rate or rates, the commission will conduct a full review of the proposed rate or rates under Section 62-8-7 NMSA 1978 and 17.1.2.53 NMAC and under 17.13.930 NMAC or 17.13.980 NMAC. [17.13.970.12 NMAC - Rp, NMPSC Rule 970.6, 7/31/2007]

17.13.970.13 FORM AND FILING OF PROTEST:

A. Contents of protest. Protest petitions to the commission shall be in writing, and signed by each of the ratepayers submitting the protest. All protests shall contain the following:

(1) the name of the utility whose proposed rates are being protested and identification of the rate or rates being protested;

(2) the name, mailing address, and phone number of each ratepayer protesting the proposed rates and the name, mailing address, and phone number of each ratepayer's attorney, if any; and

(3) a caption of the proceeding, a space for the docket number, and the title "Protest."

B. Format. Whenever possible, protests shall be typed, double-spaced, and shall be on paper 8 1/2 inches wide and 11 inches long and fastened only to the left side.

C. Use of commission form. Protestants may use, but are not required to use, the commission's form for protests. The utility shall make copies of the commission's form available to its ratepayers upon request.

D. Additional information permitted. Protestants are strongly encouraged, but are not required, to file with the protest a statement or statements of their reasons for protesting the proposed rates as well as any data, exhibits, illustrations, prepared testimony, or written argument which may aid the commission in its determination of whether just cause exists to review the rates.

E. Certificate of service. The protestants shall serve copies of the protest and any accompanying documents on the utility whose proposed rates are being protested either by first class U.S. mail or by hand delivery. A certificate of service stating the date and manner of mailing or delivery shall be included in or attached to the protest at the time of filing with the commission.

F. Number of copies required. The protestants shall provide the commission with an original plus ten (10) copies of the protest and any accompanying documents at the time of filing unless the commission directs otherwise.

G. Date of filing. If a protest is submitted to the commission before the utility has filed the change in rate or rates, the protest shall be deemed filed as of the date of the utility's filing.

H. Ratepayers' status. Ratepayers who have submitted a protest under 17.13.970.13 NMAC will be deemed parties to any protest proceeding, but will not be deemed parties to a rate review proceeding. Intervention in a ratemaking proceeding will be determined under 17.1.2. NMAC. [17.13.970.13 NMAC - Rp, NMPSC Rule 970.7, 7/31/2007]

17.13.970.14 RESPONSE TO PROTEST:

A. Response with leave of commission. No response to the substance of a protest filed with the commission is permitted except by leave of the commission or hearing examiner.

B. Challenge to validity of protest petition. The utility whose proposed rates are being protested may challenge the validity of the protest petition within ten (10) days of the filing of the petition.

(1) The challenge shall be made by motion conforming with the requirements of 17.1.2 NMAC and served upon each of the protestants.

(2) The motion shall be accompanied by affidavits and a brief in support of

the motion, which shall also be served upon the protestants.

C. Protestants to establish validity of protest petition. If a protest is challenged by motion of the utility made in accordance with 17.13.970.14 NMAC, the commission or hearing examiner may direct the protestants to verify their status as ratepayers of the utility or otherwise establish the validity of the protest petition.

D. Invalid protest petitions. If the commission or hearing examiner determines that the protest petition is invalid, the commission or hearing examiner shall take such action as is deemed appropriate, including, but not limited to, dismissal of the protest.

E. Ruling on protest. The commission shall determine the validity of any challenged protest prior to a commission determination that just cause exists to review the proposed rate or rates.

[17.13.970.14 NMAC - Rp, NMPSC Rule 970.8, 7/31/2007]

17.13.970.15 COMMISSION REVIEW OF RATES AFTER JUST CAUSE DETERMINATION:

A. Notice of hearing. Once the commission determines that just cause exists to review the proposed rate or rates, the commission shall issue an order noticing the rate or rates for hearing. Either this order or a subsequent order shall prescribe:

(1) the manner of any further notice to customers or the public, the cost of which shall be borne by the utility;

(2) a deadline for the filing of motions to intervene under 17.1.2 NMAC and directions to any protestants that they that they will not be considered parties to the rate review proceeding unless they move for and are granted intervener status; and

(3) directions to parties other than the utility and, to the extent the commission or hearing examiner may deem helpful, directions to the commission staff to file written testimony and exhibits.

B. Service of notice: The commission or hearing examiner shall mail copies of all orders issued under 17.13.970.15 NMAC to each protestant whether or not the protestant has sought or been granted intervener status.

[17.13.970.15 NMAC - Rp, NMPSC Rule 970.10, 7/31/2007]

17.13.970.16 SUBMISSION OF WRITTEN TESTIMONY AND EXHIBITS BY UTILITY:

A. Information to be submitted upon commission determination of just cause. After a commission determination of just cause for review of the proposed

rate or rates, the utility shall file the following information and documents with the commission within thirty (30) days unless the commission or hearing examiner directs otherwise:

(1) direct testimony and exhibits intended to be introduced into evidence in support of the proposed rate or rates, including any rate filing package required by commission rule or order and by 17.13.930 NMAC or 17.13.980 NMAC;

(2) a concise statement, supported by the direct testimony and exhibits, identifying:

(a) when the utility proposes to change the ratemaking treatment upon which the present rates are based, each proposed change, the reasons for the proposed change and the impact in dollars of the proposed change on the rates being requested;

(b) the compound annual growth rate of each account of plant and expenditures since the test period used in the utility's last rate filing; and

(c) any extraordinary event or circumstance, known or projected, which materially alters the utility's operating or financial condition from the condition existing during the utility's test period in its last rate case; and

(3) a concise statement setting forth the utility's compliance or failure to comply with each part of the commission's final order in each of the utility's cases decided during the preceding five (5) years and its compliance or failure to comply with 17.6.450 NMAC and 17.1 2 NMAC through 17.13.980 NMAC.

B. Copies. The utility shall provide the commission with an original plus five (5) copies of all documents filed pursuant to Subsection A of 17.13.770.16 NMAC, unless the commission or hearing examiner directs otherwise. [17.13.970.16 NMAC - Rp, NMPSC Rule 970.9, 7/31/2007]

17.13.970.17 STATUS OF PROTESTANTS DURING PROCEEDING: The protestants who file a protest will be deemed parties to any proceeding on a motion made by the utility under 17.13.970.14 NMAC but will not be deemed parties to the proceeding to review and hear the proposed rate or rates. Protestants may individually move to intervene under 17.1.2 NMAC and may or may not be granted intervener status. The commission or hearing examiner may limit the number of interveners in the rate making proceeding to avoid unnecessary delay, duplication, or expense. [17.13.970.17 NMAC - Rp, NMPSC Rule 970.11, 7/31/2007]

HISTORY OF 17.13.970 NMAC:

Pre-NMAC History. The material in this part was derived from that previously filed with the commission of public records-state records center and archives.

NMPSC Rule 970, Procedures for Review of Rates Proposed by Sewer Utilities Having Annual Operating Revenues Averaging Less Than \$500,000 Over Any Consecutive Three-Year Period, filed 12-29-1989.

History of Repealed Material.

NMPSC Rule 970, Procedures for Review of Rates Proposed by Sewer Utilities Having Annual Operating Revenues Averaging Less Than \$500,000 Over Any Consecutive Three-Year Period (filed 12-29-1989) repealed 7/31/2007.

Other History.

NMPSC Rule 970, Procedures for Review of Rates Proposed by Sewer Utilities Having Annual Operating Revenues Averaging Less Than \$500,000 Over Any Consecutive Three-Year Period" (filed 12-29-1989) was replaced by 17.13.970 NMAC, Small Sewer Utilities, effective 7/31/2007.

NEW MEXICO PUBLIC REGULATION COMMISSION UTILITY DIVISION

This is an amendment to 17.12.810 NMAC, Sections 1, 2, 4, 5, 8, 10, and 11, effective 07-31-07. This action also renumbers and reformats NMPSC Rule 810 (filed 6/30/88) to 17.12.810 NMAC as required by the current NMAC requirements, effective 07-31-07.

17.12.810.1 ISSUING AGENCY: New Mexico ~~Public Service Commission~~ Public Regulation Commission. [6/30/88; 17.12.810.1 NMAC - Rn, NMPSC Rule 810 & A, 7-31-07]

17.12.810.2 SCOPE:
A. Except as provided in Subsection B of 17.12.810.2 NMAC, 17.12.810 NMAC governs the setting of new rates, tolls, and charges by water and sanitation districts organized under the Water and Sanitation District Act, hereinafter referred to sometimes as "districts." NMPSC Rules 110.39 through 110.41 [now 17.1.2 NMAC] relating to applications for new rates shall not be applicable.
B. The provisions of 17.12.810 NMAC are not applicable to water and sanitation districts which have elected to become subject to the terms and provisions of the Public Utility Act. Any such districts shall comply with NMPSC

Rules 110.39 through 110.41 [now 17.1.2 NMAC] rather than 17.12.810 NMAC when proposing any rates, tolls, or charges.

C. When used in 17.12.810 NMAC the term "rates" shall refer to any and all rates, tolls, or charges to be filed with the ~~public service commission~~ public regulation commission under Section 73-21-55C NMSA 1978.

[6/30/88; 17.12.810.2 NMAC - Rn, NMPSC Rule 810.3 & A, 7-31-07]

17.12.810.4 DURATION: Permanent.

[17.12.810.4 NMAC - N, 7/31/2007]

17.12.810.5 EFFECTIVE DATE: ~~[NMPSC Rule 810 shall be effective for all filings made after the date of adoption of former General Order No. 47 by the commission and compliance thereof with the State Rules Act, Section 14-4-1 NMSA 1978 et seq. For all previous filings Interim General Order No. 47, adopted September 3, 1985, shall remain in effect.] July 31, 2007, unless a later date is cited at the end of a section.~~

[6/30/88; 17.12.810.5 NMAC - Rn, NMPSC Rule 810.12 & A, 7-31-07]

17.12.810.8 TABLE OF CONTENTS

A.	Purpose	17.12.810.6 NMAC
B.	Authority	17.12.810.3 NMAC
C.	Applicability	17.12.810.2 NMAC
D.	Filings by water and sanitation districts proposing new rates	17.12.810.9 NMAC
E.	Notice to taxpayer-electors prior to filing of proposed rates	17.12.810.10 NMAC
F.	Protests by taxpayer-electors	17.12.810.11 NMAC
G.	Form and filing of protest	17.12.810.12 NMAC
H.	Response to protest	17.12.810.13 NMAC
I.	Submission of written testimony and exhibits by district	17.12.810.14 NMAC
J.	Commission review of rates	17.12.810.15 NMAC
K.	Status of protestants during proceeding	17.12.810.16 NMAC
L.	Effective date	17.12.810.5 NMAC

[6/30/88; 17.12.810.8 NMAC - Rn, NMPSC Rule 810.12 & A, 7-31-07]

17.12.810.10 NOTICE TO TAXPAYER-ELECTORS PRIOR TO FILING OF PROPOSED RATES:

A. On or before the date a

district files its proposed rates with the commission the district shall notify in writing its taxpayer-electors of the proposed rates. The notice may be mailed to the taxpayer-electors with their billings or independently.

B. The notice to taxpayer-electors shall include the following information:

(1) the amount of the increase requested in both dollar amounts and percentage increase;

(2) the customer classifications to which the new rates apply;

(3) the present rates, the proposed rates, the percentage difference between the present and proposed rates for each customer class, the number of customers in each class to which the proposed rates would apply, and, for residential customers, the present rates, the proposed rates and the percentage difference between the present bill and the anticipated bill for each of the following levels of consumption—0 gallons, 2,000 gallons, 3,000 gallons, 4,000 gallons, 5,000 gallons, 6,000 gallons, 7,000 gallons, 8,000 gallons, 9,000 gallons, 10,000 gallons, 15,000 gallons, 20,000 gallons, 25,000 gallons, and 30,000 gallons, and the highest level of consumption of any residential ratepayer using in excess of 30,000 gallons in any billing period in the twelve (12) months prior to preparation of this notice by the utility;

(4) the date on which the district is filing the schedule proposing the new rates;

(5) a statement that the new rates will be subject to review and approval by the New Mexico ~~[public service commission]~~ public regulation commission only if a protest is filed with the commission by twenty-five (25) of the district's taxpayer-electors or five percent (5%) of the district's taxpayer-electors, whichever is less, no later than thirty (30) days after the district has filed with the commission the schedule proposing the new rates, together with a statement of the total number of taxpayer-electors in the district and the number of those required to meet the requirements for a valid protest and a statement in all capital letters that if a hearing is held by the ~~[public service commission]~~ public regulation commission any costs incurred by the district may be included in the district's future rates, following the district's next rate case;

(6) a statement that procedures for protesting proposed rates are set forth in 17.12.810 NMAC, a copy of which can be obtained upon request from or inspected at the main office of the district or the offices of the commission in Santa Fe, and that forms for protests are available from either the district or the commission, and indicating the telephone numbers and addresses of both the district and the commission;

(7) a statement that any interested

person may examine the rate filings, together with any exhibits and related papers that may be filed, at the main office of the district or at the offices of the commission in Santa Fe; and

(8) a statement that further information may be obtained by contacting either the district or the commission.

C. The district shall submit a copy of the form of notice to the commission for approval at least fifteen (15) days prior to giving notice to the taxpayer-electors pursuant to Subsection A above. If the commission does not disapprove the form of notice within five (5) working days of submission of the notice the form will be deemed approved.

D. Failure to comply with this section shall be deemed grounds for rejection of the filing under 17.12.810.9 NMAC proposing new rates.

[6/30/88; 10/21/91; 17.12.810.10 NMAC - Rn, NMPSC Rule 810.5 & A, 7-31-07]

17.12.810.11 PROTESTS BY TAXPAYER-ELECTORS:

A. Rates proposed by a district will be subject to commission review upon the filing with the commission of a protest signed by twenty-five (25) of the taxpayer-electors of the district or five percent (5%) of the taxpayer-electors of the district, whichever is less. Protest petitions shall conform to the requirements of 17.12.810.12 NMAC and must be filed with the commission no later than thirty (30) days after the district files with the commission the schedule proposing new rates. For the purposes of 17.12.810 NMAC all protest petitions filed with the commission relating to the same district filing of proposed new rates shall be deemed a "protest."

B. NMPSC Rules 110.38 through 110.45 and NMPSC Rules 110.45 through 110.142 [now 17.1.2 NMAC] shall be applicable to proceedings commenced upon the filing of a protest under 17.12.810.11 NMAC except to the extent inconsistent with the provisions of 17.12.810 NMAC.

C. For purposes of 17.12.810 NMAC a taxpayer-elector is a person [qualified] registered to vote [at general elections] in any precinct in the state, who: ~~[either has paid or incurred a general tax liability on real or personal property within the district in the twelve (12) months immediately preceding the filing by the district of its proposed rates, or who is purchasing real property within the district under real estate contract where property tax has been paid or incurred on such real property in the twelve (12) months immediately preceding the district's filing of its proposed rates.]~~

(1) is a resident of the district;

(2) is a nonresident of the district who pays, or will be liable for paying, rates, tolls or charges set by the board of the district; or

(3) is a non resident of the district who either has paid or incurred a general tax liability on real property within the district in the twelve months immediately preceding the district's filing of its proposed rates or who is purchasing real property within the district under a real estate contract where a property tax has been paid or incurred on the real property in the twelve months immediately preceding the district's filing of its proposed rates.

[6/30/88; 17.12.810.11 NMAC - Rn, NMPSC Rule 810.6 & A, 7-31-07]

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

This is an amendment to 10.10.2 NMAC, Sections 8, 9, 10, 11, and 13, effective July 31, 2007.

10.10.2.8 ELIGIBLE APPLICANTS: Eligible applicants are limited to state agencies, local units of government, faith-based organizations and non-profits. Indian pueblos/tribes are only eligible if they perform law enforcement functions as determined by the U.S. secretary of the interior (refer to list below). State institutions of higher learning are considered to be "state agencies" for eligibility purposes.

- A. Jicarilla Apache tribal police department
- B. Laguna tribal police department
- C. Sandia tribal police department
- D. Picuris tribal police department
- E. Pojoaque tribal police department
- F. San Juan tribal police department
- G. Santa Clara tribal police department
- H. Taos pueblo tribal police department
- I. Tesuque tribal police department
- J. Ramah Navajo division of public safety
- K. Acoma tribal police department
- L. Isleta tribal police department
- M. Santa Ana tribal police department
- N. Zuni tribal police department

[10.10.2.8 NMAC - Rp 10 NMAC 10.2.8,

3-15-00; A, 05-31-02; A, 07-29-05; A, 07-31-07]

10.10.2.9 DISTRIBUTION OF FORMULA FUNDS:

Variable pass-through: state shall distribute to its local units of government, faith-based organizations and non-profits, in the aggregate, the portion of the state's formula grant funds equal to the local government share of total state and criminal justice expenditures for the previous fiscal year (Sec. 506. (b) (1) of the act). A minimum of 49.29% must be passed through to local units of government and non-profits; and, no more than 50.71% can be used by state agencies. States may exceed the minimum pass-through by providing funds not used at the state level to local units of government. In distributing funds among urban, rural, and suburban units of local government, the state shall give priority to those jurisdictions with the greatest need (Sec. 506. (b) (2) of the act). [10.10.2.9 NMAC - Rp 10 NMAC 10.2.9, 3-15-00; A, 05-31-02; A, 05-28-04; A, 07-29-05; A, 07-31-07]

10.10.2.10 AUTHORIZED PROJECTS/PROGRAM AREAS

A. Authorized programs for ~~[2005]~~ 2007 funding are listed below. Descriptions for each program can be found in attachment A. Approved program ~~[purpose]~~ purpose areas:

- (1) law enforcement
- (2) planning, evaluation and technology

B. Applicants may request copies of the ~~[2004]~~ New Mexico drug ~~and violent crime control~~ strategy by writing the Department of Public Safety, Grants Accountability and Compliance Section, Post Office Box 1628, Santa Fe, New Mexico 87504 or by calling (505) ~~[827-9062]~~ 827-9112.

[10.10.2.10 NMAC - Rp 10 NMAC 10.2.10, 3-15-00; A, 05-31-02; A, 05-28-04; A, 07-29-05; A, 07-31-07]

10.10.2.11 APPLICATION REQUIREMENTS: All applicants for funding under the JAG formula grant program must adhere to the following procedures.

A. Each applicant shall forward **an original and** ~~[five (5)]~~ **four (4) copies** of the application to the Grants Accountability and Compliance Section, Department of Public Safety, 4491 Cerrillos Road, P.O. Box 1628, Santa Fe, New Mexico 87504-1628, phone number ~~[827-3398]~~ 827-9112.

B. The application should be single-spaced and single-sided on 8 1/2 x 11" paper. Print styles and sizes should be conducive to easy reading, i.e., no italics

unless used for highlighting. The entire application packet should not exceed forty (40) pages.

C. Application deadline: All applications must be received at the grants accountability and compliance section, department of public safety no later than 5:00 P.M., ~~[August 19, 2005]~~ August 24, 2007. It is the responsibility of the applicant to ensure that the application is received by the grants accountability and compliance section, department of public safety. Any application not received by the grants accountability and compliance section will not be considered once the deadline has expired.

D. Single purpose area rule: Only applications proposing to carry out a project in one single program will be accepted for funding consideration.

E. Proposed project term: The term of the project proposed in the application may exceed 12 months; however, funding beyond the initial award for 12 months is not guaranteed. Availability of limited funds restricts the state in granting award amounts on a year-to-year basis. The state recognizes that continued funding of successful projects is paramount to the success of the overall program. Projects should be designed to be consistent with the multi-year state strategy.

F. Certification requirements: Drug free workplace requirement: This applies to state agencies **ONLY**. Title V, Section 5153, of the Anti-Drug Abuse Act of 1988 provides that all state agencies receiving federal funds shall certify and submit proof to the granting agency that it will provide a drug-free workplace.

G. Debarment, suspension, ineligibility, and voluntary exclusion: All applicants for funds will be required to complete a certification stating that the applicant has not been suspended, debarred, or is otherwise ineligible to participate in this federal program.

H. Disclosure of lobbying activities requirement: Section 319 of Public Law 101-121 generally prohibits recipients of federal contracts, grants and loans from using appropriated funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract, grant or loan. Section 319 also requires each person who requests or receives a federal contract, grant, cooperative agreement, loan or a federal commitment to insure or grant a loan, to disclose lobbying. The term "recipient" as used in this context does not apply to Indian tribes, organizations, or agencies.

I. Disclosure of federal participation requirement: Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment) enacted in

October 1988, requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, all grantees receiving federal funds, including but not limited to state and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with federal money, and (2) the dollar amount of federal funds for the project or program. This applies only to subgrantees who receive \$500,000 or more in the aggregate during a single funding year.

J. General financial requirements: Grants funded under the formula grant program are governed by the provisions of 28 CFR Part 66, Common Rule, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Government and the Office of Management and Budget (OMB) Circulars applicable to financial assistance. These circulars along with additional information and guidance contained in "OJP financial guide for grants" (current edition), are available from OJP and from the grants accountability and compliance section. This guideline manual provides information on cost allowability, methods of payment, audits, accounting systems and financial records.

K. Audit requirement: Agencies applying for federal funds must assure that they will comply with the appropriate audit requirement. Subgrantees ~~[receiving]~~ expending \$500,000 or more in a fiscal year in all sources of federal funding shall have ~~[an audit made]~~ a single-organizationwide audit conducted in accordance with OMB Circular A-133, as amended.

L. Confidential funds requirement: State agencies and local units of government may apply for and receive grants to conduct law enforcement undercover operations. Each agency must certify that it will develop policies and procedures to protect the confidentiality of the operations. Agencies must also certify that they will comply with the office of justice programs ~~[manual OJP]~~ financial guide current edition.

M. Civil rights requirement: The applicant certifies that it will comply with the non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; Title II of the Americans With Disabilities Act of 1990 42 U.S.C. 12131; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Department of Justice Nondiscrimination Regulations

28 CFR Part 35 and 42, Subparts C, D, E and G; and Executive Order 11246, as amended by Executive Order 11375, and their implementing regulations. This applicant further certifies that if a federal or state court or the administrative agency makes a finding of discrimination, it will immediately forward a copy of the finding to the grantor agency, for submission to the office of civil rights, office of justice programs, U.S. department of justice within 30 days of receipt.

~~[N. Period of project support:~~

~~(1) 48 month limitation: Projects funded under this program may be funded for a maximum of four years (48 months) in the aggregate, including any period occurring before the effective date of the Anti-Drug Abuse Act. The limitation on funding applies to all projects which have received 48 months in the aggregate of formula and/or discretionary grant funding under the Omnibus Crime Control and Safe Streets Act as amended. This includes the justice assistance and the state and local law enforcement assistance programs or combinations of these programs. See 504 (f) of the act. The 48 month grant period need not comprise of consecutive funding years as long as the project is substantially the same.~~

~~(2) Exception: The limitation on funding applies to all projects except multi-jurisdictional drug task forces (purpose area 02, multi-jurisdictional gang task forces (purpose area 24).]~~

~~[10.10.2.11 NMAC - Rp 10 NMAC 10.2.11, 3-15-00; A, 05-31-02; A, 05-28-04; A, 07-29-05; A, 07-31-07]~~

10.10.2.13 ~~[MATCH REQUIREMENTS: JAG funds may be used to pay up to 75 percent of the cost of a project. All subgrantees must provide a match of at least 25 percent of the total project cost. Agencies which are able to "over match" are encouraged to do so and to document these expenditures.~~

~~A. Hard (cash) match requirements: The non federal share of expenditures shall be paid in cash (Section 504 (e) of the act). Funds required to pay the non federal portion of the cost of each program and project for which the grant is made shall be in addition to funds that would otherwise be made available for law enforcement by the recipients of the grant funds (Section 503 (a) (3) of the act). Hard (cash) match may be applied from the following sources only:~~

~~(1) funds from state and local units of government that have been specifically appropriated or designated as matching funds for certain programs or projects;~~

~~(2) funds available through the equitable sharing (federal asset sharing) program;~~

~~(3) funds contributed from private sources; and~~

~~(4) program income funds as a result of any method used to generate program income, i.e., seized assets, forfeitures, client fees, etc.~~

~~(5) Indian pueblos/tribes which perform law enforcement functions (as determined by the secretary of the interior) are not required to match. (Section 504 (a) (2) of the act). Joint projects which include Indian pueblos/tribes must prorate the pueblo's or tribe's portion of grant funds and apply the same percentage to the match in order to reduce the required match amount proportionately.~~

~~B. Use of proceeds received under the equitable sharing program (federal asset sharing) as match: State and local units of government may use cash they received under the equitable sharing program to cover the non federal portion of costs of any OJP project or program.~~

~~C. Use of proceeds from asset forfeitures as match: A state or local unit of government may use forfeiture funds as match if state and local statutes allow for the collection and retention of such funds.~~

~~D. Use of confidential funds as match: A state or local unit of government may use confidential funds as match as long as they can be tracked as a one-time expenditure during the life of the grant funded project based on "chain of custody" documents.] [Reserved]~~

~~[10.10.2.13 NMAC - Rp 10 NMAC 10.2.13, 3-15-00; A, 05-31-02; A, 05-28-04; A, 07-29-05; Repealed, 07-31-07]~~

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2007

Volume XVIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 16
Issue Number 2	January 17	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 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
Issue Number 18	September 17	September 28
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

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