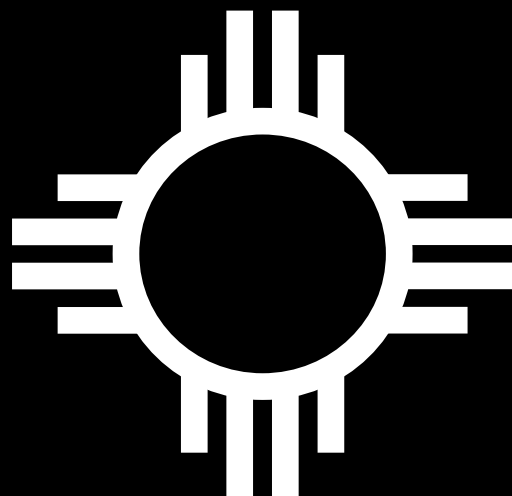


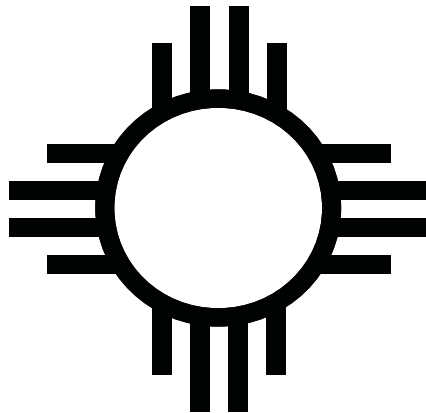
NEW MEXICO REGISTER



Volume XXI
Issue Number 15
August 16, 2010

New Mexico Register

Volume XXI, Issue Number 15
August 16, 2010



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2010

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New Mexico Register

Volume XXI, Number 15

August 16, 2010

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Adopted Rules

Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Agriculture, Department of		
19.15.110 NMAC	N	Biodiesel Fuel Specification, Dispensers, and Dispenser Labeling Requirements
19.15.111 NMAC	N	E85 Fuel Specification, Dispensers, and Dispenser Labeling Requirements
21.1.3 NMAC	N	Parental Responsibility Act Compliance
19.15.104 NMAC	A	Standard Specifications/Modifications for Petroleum Products
21.17.56 NMAC	A	Restricted-Use Pesticides
Albuquerque-Bernalillo County Air Quality Control Board		
20.11.60 NMAC	A	Permitting in Nonattainment Areas
20.11.61 NMAC	A	Prevention of Significant Deterioration
Game and Fish, Department of		
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19.31.6 NMAC	N	Migratory Game Bird
Public Education Department		
6.30.7 NMAC	A	Dual Credit
Racing Commission		
15.2.5 NMAC	A	Horse Race - Rules of the Race
Real Estate Appraisers Board		
16.62.1 NMAC	A	Real Estate Appraisers: General Provisions
16.62.2 NMAC	A	Application for Apprentice
16.62.3 NMAC	A	Application for License
16.62.4 NMAC	A	Application for Residential Certificate
16.62.5 NMAC	A	Application for General Certificate
16.62.6 NMAC	A	Examinations
16.62.7 NMAC	A	Issuance/Renewal of Apprentice Registration/Licenses/Certificates
16.62.8 NMAC	A	Educational Programs/Continuing Education
16.62.10 NMAC	A	Temporary Practice
16.62.12 NMAC	A	Fees

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

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

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

Public Accountancy Board
Notice of Proposed Rulemaking

The New Mexico Public Accountancy Board ("Board") will convene a public hearing and regular Board meeting on Monday, November 1, 2010. The hearing and meeting will be held at 9:00 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules.

The Board staff will recommend that the Board adopt amendments to the following rules:

NMAC NUMBER	RULE NAME
16.60.5 NMAC	Code of Professional Conduct

Notice of the hearing and Board meetings has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at www.rld.state.nm.us/b&c/accountancy. Copies may also be obtained by contacting the Board office at (505) 222-9853. Written comments regarding the proposed amendments should be directed to Ms. Marie Aragon, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113 or faxed to (505) 222-9855. Comments must be received by 5:00 p.m. on Friday, October 29, 2010; however the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9852 by 5:00 p.m. on Monday, October 25, 2010.

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

RULE HEARING & REGULAR SCHEDULED BOARD MEETING NOTICE:

Notice is hereby given that the New Mexico Board of Barbers and Cosmetologists will convene a Rule Hearing/Regular Scheduled Board Meeting which was previously scheduled on Friday, August 13, 2010 and is being rescheduled on **Friday, September 24, 2010 at 9:00 am** to amend, replace and repeal:

Title 16, Chapter 34, 16.34.4.14 Special Licenses-Student Permit Licenses

The hearing will be held at the **Regulation & Licensing Building in the Rio Grande Room, Second Floor, 2550 Cerrillos Rd, Santa Fe N.M. 87505**. Immediately following the Rule Hearing, the New Mexico Board of Barbers and Cosmetologists will convene a regular meeting.

Copies of the proposed rules are available on the Board of Barbers and Cosmetologists Website: www.RLD.state.nm.us/barberscosmetologists or by sending a request to the Board Office, P.O. Box 25101 Santa Fe, NM 87504-5101, or by phone (505) 476-4690. 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 September 3, 2010 to allow time for distribution to the Board and Commissions members. Individuals planning on testifying at the hearing must provide 5 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the Board meeting may be closed to the public while the Board is 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 are in need of reasonable accommodations for their disabilities should contact the Board office at least one week prior to the meeting.

Final action on the proposed rules will be taken during the Board meeting. Portions of the Board meeting may be closed to the public while the Board is 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 are in need of reasonable accommodations for their disabilities should contact the Board office at least one week prior to the meeting.

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Saturday, August 28, 2010, beginning at 9:00 a.m., at **State Bar of New Mexico-Auditorium, 5121 Masthead, NE, Albuquerque, New Mexico, 87199**, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Updates and Miscellaneous; Revocations; Fiscal Year 2010 4th Quarter and Annual Depredation Report; General Public Comments (comments limited to 3 minutes); Approval of FY 2011 Operating Budget and Capital Projects Request; Final Approval of the List of Threatened and Endangered Species Rule (19.33.6, NMAC) Developed in Accordance with the Biennial Review; and Closed Executive Session pursuant to Section 10-15-1, H, (1), NMSA, 1978.

The following rules are available for public comment and discussion by the Commission:

- * Summary of Proposed Amendments to the Bear and Cougar Rule (19.31.11, NMAC);
- * Summary of Proposed New Rule for Private Land antelope License Allocation;
- * Summary of Proposed Amendments to the Pronghorn Antelope Rule (19.31.15, NMAC);
- * Summary of Proposed Amendments to the Deer Rule (19.31.13, NMAC); and
- * Summary of Proposed Amendments to the Following Rules - Boundary Descriptions for Wildlife Management Areas (19.30.4, NMAC), Hunting and Fishing License Application (19.31.3, NMAC), Hunting and Fishing - Manner and Method of Taking (19.31.10, NMAC).

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

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other

form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Sonya Quintana at (505) 476-8029. Please contact Ms. Quintana at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please also contact Ms. Quintana if a summary or other type of accessible form is needed.

NEW MEXICO LIVESTOCK BOARD

NEW MEXICO LIVESTOCK BOARD

NOTICE OF RULE MAKING AND ADOPTION OF RULE HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a rule making and adoption of rule hearing and a regular board meeting will be held on Monday, August 23, 2010, in the 8th floor Desert Conference Room, 300 San Mateo NE Suite 800, Albuquerque, New Mexico at 9:00 a.m. The Board will initiate rule changes regarding Livestock Board Fees and Transportation of Livestock and discuss other matters of general business.

Copies of the rule can be obtained by contacting Myles C. Culbertson, Executive Director, New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161. Interested persons may submit their views on the proposed rule to the Board at the above address and/or may appear at the scheduled hearing and make a brief verbal presentation of their view. Copies of the agenda may be obtained at New Mexico Livestock Board office or by calling (505) 841-6161.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

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

A Public Hearing on the proposed amendments to the 2009: International Residential Building Code, Sections 401.4 and 403.1.3.2; International Energy Conservation Code, Sections 503 and 506 will be held the following dates, times and locations:

September 16, 2010, 11:00 am - 2:00 pm:
LAS CRUCES, NM - CID Conference Room, 505 So. Main St., Suite 150
September 17, 2010, 9:00 pm - 12:00 pm:
ALBUQUERQUE, NM - Main Conference Room: 5200 Oakland Avenue, NE
September 20, 2010, 9:00 am - 12:00 pm:
SANTA FE, NM - Rio Grande Conference Room, 2550 Cerrillos Road, Santa Fe

Copies of the proposed rules are currently available on the Construction Industries Division's website: www.rld.state.nm.us/cid and at the CID office in Santa Fe.

You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., September 20, 2010.

If you require special accommodations to attend the hearing, please notify the Division by phone, email or fax, of such needs no later than September 13, 2010. Telephone: 505-476-4686. Email: www.rld@state.nm.us/cid Fax No. 505-476-4685.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Gross Receipts and Compensating Tax Act

3.2.1.18(K) NMAC Section 7-9-3.5 NMSA 1978

(Gross Receipts; Services - Athletic Officials)

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

Uniform Division of Income for Tax Purposes Act

3.5.19.20 NMAC Section 7-4-19 NMSA 1978

(Special Rules: Telecommunications Industry)

These proposals were placed on file in the Office of the Secretary on August 2, 2010. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about October 18, 2010.

A public hearing will be held on these proposals on Tuesday, September 21, 2010, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before September 21, 2010.

3.2.1.18 GROSS RECEIPTS; SERVICES.

K. **Athletic officials.**

(1) Receipts from refereeing, umpiring, scoring or other officiating at school events sanctioned by the New Mexico activities association are exempt from gross receipts tax pursuant to Section 7-9-41.4 NMSA 1978.

(2) Receipts of a referee, umpire, scorer or other similar athletic official from umpiring, refereeing, scoring or officiating at a sporting event located in New Mexico that is not sanctioned by the New Mexico activities association, are receipts derived from performance of a service and are subject to the gross receipts tax. Such receipts will not be exempted from the gross receipts tax as "wages" unless the umpires,

referees, scorers and other athletic officials demonstrate to the department that such receipts are derived from an employment relationship whereby they are employees within the meaning of [Section] 3.2.105.7 NMAC.

3.5.19.20 **SPECIAL RULES: TELECOMMUNICATIONS INDUSTRY:**

The following special rules are established with respect to the apportionment of income derived from sales of telecommunications and ancillary services. The rules in this regulation apply whether the telecommunications service income is earned by a traditional telephone company, a VOIP company, a cable company, an electric company or any other type of entity subject to the apportionment rules.

A. *In General.* Except as specifically modified by this regulation, a taxpayer providing telecommunications or ancillary services that is subject to the apportionment rules set forth in M.G.L. 63, Section 38 shall allocate and apportion its net income under the rules set forth in that section and the rules issued thereunder.

B. *Definitions.* The following definitions are applicable to the terms contained in this section, unless the context clearly requires otherwise.

(1) "800 service" means a "telecommunications service" that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800", "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.

(2) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include collection services provided by the seller of the "telecommunications services" to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

(3) "Air-to-ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(4) "Ancillary service" means services that are associated with or incidental to the provision of telecommunications services, including but not limited to the following subcategories: detailed telecommunications billing, directory

assistance, vertical service, conference bridging service and voice mail services. The term "ancillary service" is defined as a broad range of services and is broader than the sum of the subcategories.

(5) "Bundled transaction" means the retail sale of two or more products where 1) the products are otherwise distinct and identifiable, and 2) the products are sold for one non-itemized price. For purposes of this section, a "bundled transaction" does not include the sale of any products in which the "sales price" varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. A transaction that otherwise meets the definition of a "bundled transaction" is not a "bundled transaction" if it is:

(a) the "retail sale" of two products where the first product is essential to the use of the second product, and the first product is provided exclusively in connection with the second, and the true object of the transaction is the second;

(b) the "retail sale" of more than one product, but the products are sourced the same under this special rule; or

(c) the "retail sale" of more than one product, but the sum of the "purchase price" or "sales price" of products which are sourced differently under this special rule is de minimis.

(6) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(7) "Coin-operated telephone service" means a "telecommunications service" paid for by inserting money into a telephone accepting direct deposits of money to operate.

(8) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(9) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(10) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service. "Customer" does not include a reseller of telecommunications service or, for mobile telecommunications service, of a serving carrier under an agreement to serve the customer outside the home service provider's licenses service area.

(11) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(12) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(13) "Directory assistance" means an ancillary service of providing telephone number information, or address information.

(14) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(15) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(16) "Home service provider" means a home service provider as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(17) "International" means a "telecommunications service" that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

(18) "Interstate" means a "telecommunications service" that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or United States territory or possession.

(19) "Intrastate" means a "telecommunications service" that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

(20) "Mobile telecommunications service" means the same as that term is defined in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(21) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(22) "Network access service" means the provision by a local exchange telecommunication service provider of the use of its local exchange network by an inter-exchange telecommunication service provider to originate or terminate the inter-exchange telecommunication service

provider's traffic carried to or from a distant exchange.

(23) "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications or ancillary service business, but that are not physically located in any particular state.

(24) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages or sounds.

(25) "Pay telephone service" means a telecommunications service provided through any pay telephone.

(26) "Place of primary use" is the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" shall be within the licensed service area of the home service provider.

(27) "Post-paid calling service" is the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except for the fact that it is not exclusively a telecommunication service.

(28) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(29) "Prepaid wireless calling service" means the sale of a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

(30) "Private communications service" means a telecommunications

service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(31) "Product" means tangible personal property, digital good or service.

(32) "Property factor" means the property factor as determined under M.G.L. c. 63, Section 38, including any rules and regulations issued thereunder, as further modified by this section.

(33) "Sales factor" means the sales factor as determined under M.G.L. c. 63, Section 38, including any rules and regulations issued thereunder, as further modified by this section.

(34) "Service address" means the following.

(a) The location of the customer's telecommunications equipment, to which the customer's call is charged, and from which the call originates or terminates, regardless of where the call is billed or paid.

(b) If the location in Subparagraph (a) above is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(c) If the location in Subparagraphs (a) and (b) above are not known, the service address means the location of the customer's place of primary use.

(35) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added.

(a) The term "telecommunication service" is defined as a broad range of services. The term includes, but is broader than the sum of, the following subcategories 800 service, 900 service, wireline service, fixed wireless service, mobile wireless service, paging service, prepaid calling service, prepaid wireless calling service, private communication service, value-added non-voice data service, coin-

operated telephone service, international telecommunications service, interstate telecommunications service, intrastate telecommunications service, network access service and pay telephone service.

(b) The term "telecommunications service" does not include:

(i) data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(ii) installation or maintenance of wiring or equipment on a customer's premises;

(iii) tangible personal property;

(iv) advertising, including but not limited to directory advertising;

(v) billing and collection services provided to third parties;

(vi) internet access service;

(vii) radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider; radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;

(viii) "ancillary services"; or

(ix) digital products "delivered electronically", including but not limited to software, music, video, reading materials or ring tones.

(c) Examples of included and excluded services.

(i) Example 1. An entity provides dedicated network service to an entity which will resell that service as intrastate telecommunications service. Both entities are providing a telecommunications service.

(ii) Example 2. An entity provides an interstate telecommunications service to an internet service provider which will use that service in the provision of internet access service. The entity providing interstate telecommunications service is providing a telecommunications service. The entity providing internet service is not providing a telecommunications service.

(iii) Example 3. An entity primarily engaged in the provision of cable television provides an interstate telecommunications service. The entity is engaged in the provision of

telecommunications service.

(36) "Value-added non-voice data service" means a service that otherwise meets the definition of "telecommunications services" in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.

(37) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(38) "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

C. *Property factor.* Outerjurisdictional property that is used by a taxpayer in providing a telecommunications or ancillary service shall be excluded from the numerator and denominator of the property factor.

D. *Sales factor.* Sales of telecommunications and ancillary services shall be included or excluded from the numerator and denominator of the sales factor as follows.

(1) Gross receipts from the sale of telecommunications services, other than those defined in 830 CMR 63.38.11(5)(c)-(g), which are sold on a call-by-call basis are in this state when:

(a) the call originates and terminates in this state, or

(b) the call either originates or terminates and the service address is also located in this state.

(2) Gross receipts from the sale of telecommunications services, other than those defined in 830 CMR 63.38.11(5)(c)-(g), which are sold on other than a call-by-call basis, are in this state when the customer's place of primary use is in this state.

(3) Gross receipts from the sale of mobile telecommunications services, other than air-to-ground radiotelephone service and prepaid calling service, are in this state when the customer's place of primary use is in this state pursuant to the Mobile Telecommunications Sourcing Act.

(4) Gross receipts from the sale of pre-paid calling service, pre-paid wireless calling service and post-paid calling service are in this state when the origination point of the telecommunications signal is first identified in this state by either:

(a) the seller's telecommunications system, or

(b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(5) Gross receipts from the sale of a private communication service are in this state:

(a) if such service is for a separate charge related to a customer channel termination point, when the customer channel termination point is located in this state;

(b) if under such service all customer termination points are located entirely within one state, when the customer channel termination points are located in this state

(c) if such service is for segments of a channel between two customer channel termination points located in different states and such segments of channel are separately charged, when the customer channel termination points are in this state, provided however that only fifty percent of such gross receipts shall be sourced to this state; and

(d) if such service is for segments of a channel located in more than one state and such segments are not separately billed, when the customer channel termination points are in this state, provided however that only a percentage of such gross receipts, determined by dividing the number of customer channel termination points in the state by the total number of customer channel termination points, are in this state.

(6) A portion of the total gross receipts from sales of telecommunication services to other telecommunication service providers for resale is in this state in an amount determined by multiplying such total gross receipts by a fraction, the numerator of which is "total carrier's carrier service revenues" for this state and the denominator of which is the sum of "total carrier's carrier service revenues" for all states in which the taxpayer is doing business, as reported by the federal communications commission in its report titled telecommunications revenues by state, Table 15.6, or successor reports which include such information, for the most recent year available as of the due date of the return, determined without regard to extensions.

(7) Gross receipts attributable to the sale of an ancillary service are in this state when the customer's place of primary use is in this state.

(8) Gross receipts attributable to the sale of a telecommunication or ancillary service sold as part of a bundled transaction are in this state when such gross receipts would be this state in accordance with the provisions of 830 CMR 63.38.11(5)(a)-(g).

(a) The amount of gross receipts attributable to the sale of a telecommunication or ancillary service which is sold as part of a bundled transaction shall be equal to the price charged by the taxpayer for such

service when sold separately, adjusted by an amount equal to the quotient of a) the difference between 1) the price charged by the taxpayer for the bundled transaction, and 2) the sum of the prices charged by the taxpayer for each of the included products when sold separately, and b) the number of products included in the bundled transaction.

(b) Example. Bundler offers a package of services that includes monthly cable television access, internet access and phone service for ninety dollars (\$90) a month. The price for these three services when sold separately is one hundred and twenty dollars (\$120) a month, fifty dollars (\$50) for cable, forty dollars (\$40) for internet access and thirty dollars (\$30) for phone service. The amount of gross receipts attributable to the sale of the telecommunications services included in the bundle is determined as follows.

$$30 - [(120 - 90)/3]$$

$$30 - [30/3]$$

$$30 - 10$$

$$20$$

(c) If the amount of such gross receipts is not determinable under Subparagraph (a) of Paragraph (8) above, then they may be determined by reasonable and verifiable standards from taxpayer's books and records that are kept in the regular course of business for purposes including, but not limited to, non-tax purposes.

(9) Gross receipts from the sale of telecommunications services which are not taxable in the state to which they would be apportioned pursuant to 830 CMR 63.38.11(5)(a)-(g), shall be excluded from the denominator of the sale factor. For purposes of this rule, a taxpayer is taxable in another state if:

(a) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, or a franchise tax for the privilege of doing business; or

(b) that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does subject the taxpayer to the tax.

[3.5.19.20 NMAC - N, XXX]

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 15 OIL AND GAS PART 110 BIODIESEL FUEL SPECIFICATION, DISPENSERS, AND DISPENSER LABELING REQUIREMENTS

19.15.110.1 ISSUING AGENCY:

New Mexico State University, New Mexico
Department of Agriculture
[19.15.110.1 NMAC - N, 08/16/10]
[MSC 3189, P. O. Box 30005, Las Cruces,
New Mexico 88003-8005, Telephone: (575)
646-3007]

19.15.110.2 SCOPE: All parties
involved in the manufacture or sale of
petroleum products as defined in the
Petroleum Products Standards Act.
[19.15.110.2 NMAC - N, 08/16/10]

**19.15.110.3 S T A T U T O R Y
AUTHORITY:** Granted to the board of
regents of New Mexico state university
under the Petroleum Products Standards Act,
Chapter 57, Article 19, Sections 25 through
37, New Mexico Statutes Annotated 1978.
[19.15.110.3 NMAC - N, 08/16/10]

19.15.110.4 D U R A T I O N :
Permanent.
[19.15.110.4 NMAC - N, 08/16/10]

19.15.110.5 EFFECTIVE DATE:
August 16, 2010, unless a later date is cited
at the end of a section.
[19.15.110.5 NMAC - N, 08/16/10]

19.15.110.6 OBJECTIVE: This
part establishes the specifications and
test methods for biodiesel as well as the
requirements for the dispensers and labeling
of the dispensers.
[19.15.110.6 NMAC - N, 08/16/10]

19.15.110.7 DEFINITIONS:

A. "Director" means the
director of the New Mexico department of
agriculture.

B. "Department" means
the New Mexico department of agriculture.

C. "Biodiesel" means a
renewable, biodegradable, mono alkyl ester
combustible liquid fuel that is derived from
agricultural plant oils or animal fats and that
meets the current edition of the American
society for testing and materials (ASTM)
specification for biodiesel fuel, B100, blend

stock for distillate fuels.

D. "Biodiesel blend" means
a fuel comprised of a blend of biodiesel
fuel with petroleum based diesel fuel,
designated BXX. In the abbreviation BXX,
the XX represents the volume percentage of
biodiesel fuel in the blend.

E. "Batch" and "production
lot" means a homogenous production
volume of finished biodiesel from one or
more sources that is held in a single container
where representative samples are taken and
analyzed to provide an authentic certificate
of analysis for the specific volume.

F. "Biodiesel certificate
of analysis" means a document verifying
that B100 biodiesel has been analyzed and
complies with, at minimum, the current
edition of the ASTM D6751 biodiesel fuel
test methods and specifications.

G. "Accredited laboratory"
means a laboratory that is currently
accredited by an independent laboratory
accrediting body for analyzing motor fuels
using test procedures and specifications that
are in specification D6751.

H. "Other renewable
diesel" means a diesel fuel substitute,
produced from non-fossil renewable
resources, that has an established ASTM
international standard, is approved by the
United States environmental protection
agency, and meets specifications of the
national conference on weights and
measures, designated "100% biomass-based
diesel".

I. "Other renewable diesel
blend" means a fuel comprised of a blend of
other renewable diesel fuel with petroleum
based diesel fuel, designated "XX biomass-
based diesel blend". In the abbreviation,
"XX", the XX represents the volume
percentage of other renewable diesel in the
blend.

[19.15.110.7 NMAC - N, 08/16/10]

19.15.110.8 SPECIFICATIONS:

A. "Biodiesel fuel
specifications." B100 biodiesel intended
for blending with diesel fuel shall meet the
current edition of ASTM D6751, standard
specification for biodiesel fuel (B100) blend
stock for middle distillate fuels.

B. Blends of biodiesel
and diesel fuels shall meet the following
requirements:

(1) The base diesel fuel shall meet
the current edition of ASTM D 975, standard
specification for diesel fuel oils.

(2) The biodiesel blend stock shall
meet the current edition of ASTM D6751,
standard specification for biodiesel (B100)
blend stock for middle distillate fuels.

(3) The standard specification for

diesel fuel oil, biodiesel blend (B6 to B20),
shall meet the current edition of ASTM
D7467.

[19.15.110.8 NMAC - N, 08/16/10]

19.15.110.9 BIODIESEL FUEL DISPENSERS:

A. Biodiesel fuel dispensers
("pumps"): The dispenser or "pump" used to
deliver biodiesel and its blends is required to
be a legal-for-trade, national type evaluation
program (NTEP) approved with a certificate
of conformance (CC) dispenser designed
for petroleum No. 2 diesel fuel, correctly
calibrated with the actual blend of biodiesel
being dispensed.

B. Unless clearly indicated
otherwise on the NTEP CC, an NTEP
approved diesel dispenser is only approved
to a maximum 20% biodiesel blend (B20
biodiesel blend).

[19.15.110.9 NMAC - N, 08/16/10]

**[NOTE: IMPORTANT INFORMATION
THAT YOU NEED TO KNOW:**
"Blending" dispensers are dispensers that
take two different grades of motor fuel and
are capable of forming a third intermediate
grade inside of the dispenser at the time
of sale. A blending dispenser used for
the blending of biodiesel must be NTEP
approved as a blending dispenser for that
particular product, and the product's blend
percentage must not exceed that allowed
by the NTEP CC. As with any commercial
measuring device, check with the device
manufacturer if you have any questions
regarding the proper usage of the device.]

19.15.110.10 DISPENSER LABELING:

A. "Biodiesel labeling
specifications": There are three different labeling
requirements for biodiesel at four different
concentration levels.

(1) No label is required for blends
B5 and lower. Retailers are not required to
disclose the presence of biodiesel at these
low concentrations, provided they meet the
specifications in ASTM D975.

(2) For fuel containing more than
five percent biodiesel, up to B20, the text
within the heading (black band) should
display either:

(a) the capital letter **B** followed by
a numeric representation of the percentage
of biodiesel and then the term "**biodiesel
blend**"; or

(b) the term "**biodiesel blend**;"
retailers can provide the exact percentage of
biodiesel in this range (B10, B15), but are
not required to; directly underneath the black
band is the text "**contains biomass-based
diesel or biodiesel in quantities between 5
percent and 20 percent.**"

(3) For fuel concentrations higher than B20 and less than B100, a specific blend designation (e.g., **B25, B50, B99**, etc.) is required in the heading, followed by the term **"biodiesel blend."** Directly underneath the black band is the text **"contains more than 20 percent biomass-based diesel or biodiesel."**

(4) For neat biodiesel (B100), the heading must display **"B100 biodiesel,"** and below the black band is the text **"contains 100 percent biodiesel."**

(5) The provisions for biomass-based diesel fuel are similar to those of biodiesel, with the exception that no letter number designation is used in the black heading. Fuels that contain more than five percent biodiesel and more than five percent biomass-based diesel fuel must have a label for both biodiesel and biomass-based diesel fuel of the appropriate type for the level of inclusion of biodiesel and biomass-based diesel.

B. Label size, font, and format requirements: The labeling requirements are consistent with those in place of other alternative fuels with exception of color. Biodiesel labels require a blue background (PMS 277 or its equivalent). The type within the black band is also blue (PMS 277 or its equivalent). The label is 3 inches (7.62 cm) wide x 22 inches (6.35 cm) long. "Helvetica black" type is used and centered throughout. The black band at the top should measure 1 inch (2.54 cm) deep. Spacing of text in the band is 3 inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. The script underneath the black band must be centered horizontally, with 1/8 inch (.32 cm) between each line. The bottom line of type is 3 inch (.64 cm) from the bottom of the label. All type should fall no closer than 3/16 in (.48 cm) from the side edges of the label.

[19.15.110.10 NMAC - N, 08/16/10]

19.15.110.11 BIODIESEL FUEL DELIVERY DOCUMENTATION:

A. An invoice, bill of lading, shipping paper, or other documentation, must accompany each delivery of fuel other than a sale by a retail or nonretail dealer (e.g. cardlock) to a consumer.

B. The delivery documentation is required to state the actual volume percent biodiesel in the fuel. For example, "B2 biodiesel blend", "B5 biodiesel blend", "B20 biodiesel blend", etc., for the specific volume percent of biodiesel in that particular delivery of fuel.

C. A biodiesel certificate of analysis for each batch or production lot is required to verify that the B100 biodiesel has been analyzed and complies with, at minimum, ASTM D6751 biodiesel fuel test methods and specifications.

[19.15.110.11 NMAC - N, 08/16/10]

HISTORY OF 19.15.110 NMAC: [RESERVED]

NEW MEXICO DEPARTMENT OF AGRICULTURE

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 15 OIL AND GAS PART 111 E85 FUEL SPECIFICATION, DISPENSERS, AND DISPENSER LABELING REQUIREMENTS

19.15.111.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture
[19.15.111.1 NMAC - N, 08/16/10]
[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

19.15.111.2 SCOPE: All parties involved in the manufacture or sale of petroleum products as defined in the Petroleum Products Standards Act.

[19.15.111.2 NMAC - N, 08/16/10]

19.15.111.3 S T A T U T O R Y AUTHORITY: Granted to the board of regents of New Mexico state university under the Petroleum Products Standards Act, Chapter 57, Article 19, Sections 25 through 37, New Mexico Statutes Annotated 1978.

[19.15.111.3 NMAC - N, 08/16/10]

19.15.111.4 D U R A T I O N : Permanent.

[19.15.111.4 NMAC - N, 08/16/10]

19.15.111.5 EFFECTIVE DATE: August 16, 2010, unless a later date is cited at the end of a section.

[19.15.111.5 NMAC - N, 08/16/10]

19.15.111.6 OBJECTIVE: This part establishes the specifications, test methods, labeling requirements, and dispensers for E85 fuel.

[19.15.111.6 NMAC - N, 08/16/10]

19.15.111.7 DEFINITIONS:

A. "Director" means the director of the New Mexico department of agriculture.

B. "Department" means the New Mexico department of agriculture.

C. "E85 fuel ethanol" means a blend of ethanol and hydrocarbons of which the ethanol portion is nominally 75 to 85 volume percent denatured fuel ethanol (Ref. ASTM D5798).

[19.15.111.7 NMAC - N, 08/16/10]

19.15.111.8 SPECIFICATIONS:

"E85 fuel specifications" shall meet the current edition of ASTM D5798, *standard specification for fuel ethanol (Ed75- Ed85) for automotive spark ignition engines.*

[19.15.111.8 NMAC - N, 08/16/10]

19.15.111.9 D I S P E N S E R LABELING:

A. "E85 fuel ethanol dispenser labeling": E85 fuel ethanol dispensers are required to be labeled in type at least 2 inch in height and 1/16 inch width with the capital letter "E" followed by the numerical value volume percent denatured ethanol and ending with the word, "ethanol". For example: "E85 ethanol" and "for use in flexible fuel (FFV) only". In addition, E85 fuel ethanol dispensers are required to be labeled with its automotive fuel rating, in accordance with the federal trade commission (FTC) requirements in 16 CFR Part 306.

B. E85 fuel ethanol dispensers ("pumps"): E85 fuel ethanol has very different properties than standard gasoline or 10% ethanol-gasoline blends. It can have major impact on certain metals, rubber, PVC, etc. Thus, the equipment used to dispense E85 fuel ethanol must be compatible with this product. New Mexico currently requires that commercially used weighing and measuring devices have a national type evaluation program (NTEP) certificate of conformance (CC) for the particular application of the device. This requirement includes E85 fuel ethanol. However, there are still relatively few NTEP approved E85 fuel ethanol dispensers in the marketplace. To help accommodate consumers and industry in the state of New Mexico, and to help promote the use of renewable fuels, the New Mexico department of agriculture (NMDA), standards and consumer services (S&CS) is allowing components to be retrofitted and properly prepared to dispense E85 fuel ethanol. Correct retrofitting and preparation of the dispensing system is critical to provide some level of assurance against fuel contamination, component breakdowns, and vehicle damage.

[19.15.111.9 NMAC - N, 08/16/10]

[The U.S. Department of Energy (U.S. DOE) and the National Ethanol Vehicle Coalition (NEVC) have information on preparation and retrofitting fueling systems for dispensing E85 Fuel Ethanol on their web sites.]

HISTORY OF 19.15.111 NMAC: [RESERVED]

**NEW MEXICO
DEPARTMENT OF
AGRICULTURE**

**TITLE 21 AGRICULTURE AND
RANCHING
CHAPTER 1 AGRICULTURE AND
RANCHING GENERAL PROVISIONS
PART 3 P A R E N T A L
RESPONSIBILITY ACT COMPLIANCE**

21.1.3.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture
[21.1.3.1 NMAC - N, 8/16/2010]
[MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007]

21.1.3.2 SCOPE: This part applies to disciplinary proceedings by the issuing agency pursuant to the Parental Responsibility Act against a license, certificate, registration or permit required to engage in a profession or occupation.
[21.1.3.2 NMAC - N, 8/16/2010]

21.1.3.3 S T A T U T O R Y AUTHORITY: This part is adopted pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13, and the following licensing statutes under the authority of the department of agriculture:

A. Egg Grading Act, NMSA 1978, Section 25-6-12;

B. Dairy Establishment Sanitation Act, NMSA 1978, Sections 25-7B-4 and 25-7B-6;

C. Standards of Weights and Measures Act, NMSA 1978, Sections 57-17-1 to 57-17-19;

D. Weightmaster Act, NMSA 1978, Section 57-18-5;

E. Petroleum Products Standards Act; NMSA 1978, Sections 57-18-3 and 57-19-28;

F. New Mexico Pesticide Control Act, NMSA 1978, Section 76-4-17;

G. Plant Protection Act, NMSA 1978, Sections 76-5-14, 76-5-16, 76-5-21, and 76-5-23;

H. Bee Act, NMSA 1978, Sections 76-9-6, 76-9-10 and 76-9-11; and

I. Produce Marketing Act, NMSA 1978, Section 76-15-14.

[21.1.3.3 NMAC - N, 8/16/2010]

21.1.3.4 D U R A T I O N : Permanent

[21.1.3.4 NMAC - N, 8/16/2010]

21.1.3.5 EFFECTIVE DATE: August 16, 2010, unless a later date is cited at the end of a section.

[21.1.3.5 NMAC - N, 8/16/2010]

21.1.3.6 O B J E C T I V E :

This part is intended to implement the requirements of the Parental Responsibility Act as they apply to the issuance, renewal, suspension or revocation of any license, certificate, registration or permit required to engage in a profession or occupation by the issuing agency.

[21.1.3.6 NMAC - N, 8/16/2010]

21.1.3.7 DEFINITIONS: All terms defined in the Parental Responsibility Act shall have the same meaning in this part unless defined below:

A. "agency" means the New Mexico department of agriculture;

B. "HSD" means the New Mexico human services department;

C. "license" means a license, certificate, registration or permit issued by agency that a person is required to have to engage in a profession or occupation in New Mexico;

D. "statement of compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support; and

E. "statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment or order for support.

[21.1.3.7 NMAC - N, 8/16/2010]

21.1.3.8 G E N E R A L PROVISIONS:

A. Disciplinary action: If an applicant or licensee is not in compliance with a judgment and order for support, the agency:

(1) shall deny an application for a license;

(2) shall deny the renewal of a license; and

(3) has grounds for suspension or revocation of a license.

B. Certified list: Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the agency shall match the certified list against the current list of agency applicants and licensees. Upon later receipt of an application for licensure or renewal, the agency shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the agency shall report to HSD the names of agency applicants and licensees who are on the certified list and the action the agency has taken in connection with such applicants and licensees.

C. Initial action: Upon determination that an applicant or licensee appears on the certified list, the agency shall:

(1) commence a formal proceeding under Subsection D of 21.1.3.8 NMAC to

take appropriate action under Subsection A of 21.1.3.8 NMAC; or

(2) for current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the agency with a subsequent statement of compliance by the earlier of the application for license renewal or a specified date not to exceed six (6) months; if the licensee fails to provide the statement of compliance, the agency shall commence a formal proceeding under Subsection D of 21.1.3.8 NMAC.

D. Notice of contemplated action: Prior to taking any action specified in Subsection A of 21.1.3.8 NMAC, the agency shall serve upon the applicant or licensee a written notice stating that:

(1) the agency has grounds to take such action, and the agency shall take such action unless the applicant or licensee:

(a) mails a letter (certified mail return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

(b) provides the agency, within thirty (30) days of the date of the notice, a statement of compliance; and

(2) if the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact HSD child support enforcement division.

E. Evidence of proof: In any hearing under this part, relevant evidence is limited to the following:

(1) a statement of non-compliance is conclusive evidence that requires the agency to take the appropriate action under Subsection A of 21.1.3.8 NMAC unless:

(2) the applicant or licensee can provide the agency with a subsequent statement of compliance which shall preclude the agency from taking any action based solely on the prior statement of non-compliance.

F. Order: When an action is taken under this part solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The agency may also include any other conditions necessary to comply with agency requirements for reapplications or reinstatement of lapsed licenses.

G. Procedures: Proceedings under this part shall be governed by the agency's statutory authority, and any adjudicatory procedures adopted by the agency.

[21.1.3.8 NMAC - N, 8/16/2010]

HISTORY OF 21.1.3 NMAC:
[RESERVED]

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 19.15.104 NMAC, Section 9, effective August 16, 2010.

19.15.104.9 MODIFICATIONS TO ASTM STANDARD SPECIFICATION FOR AUTOMOTIVE SPARK-IGNITION ENGINE FUEL:

A. Applications for temporary exceptions to vapor pressure and vapor liquid ratio specifications may be made to the director. The director may grant exemptions at his sole discretion, when said applications contain evidence satisfactory to the director that outlets marketing gasoline in New Mexico cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available.

B. Minimum levels of lead substitutes shall be as follows:

(1) Phosphorus - 0.005 grams per U.S. gallon.

(2) Sodium - 0.012 grams per U.S. gallon.

(3) Manganese - 0.032 grams per U.S. gallon.

C. Test methods for the determination of the above quantities which do not have ASTM or SAE methods shall be as follows: Sodium - NMDA Method 93-1 (atomic absorption).

D. The director may determine a minimum variance between posted octane and octane determined by near infra-red spectrophotometry at which enforcement actions will be taken. Enforcement actions may be taken when it is determined by the petroleum standards laboratory that the variance between the (R+M)/2 octane as determined by near infra-red spectrophotometry and the posted octane number exceeds two (2) octane units.

E. A vapor pressure increase not exceeding one pound per square inch shall be allowed for gasoline-alcohol blends in excess of one (1) volume percent alcohol.

F. Vapor pressure and vapor liquid ratio seasonal specification may be extended for a maximum period of fifteen (15) days, if the director determines an extension is needed, to allow for the disbursement of old stocks.

[G. For gasoline-alcohol blends that are not of ASTM distillation Class D or E, the minimum temperature at 50 percent evaporated shall be 158 degrees F (70 degrees C) for blends in excess of one (1) volume percent alcohol.

H.] G. Brake fluid: The specifications, test methods and apparatus for brake fluid shall be those established in the federal *motor vehicle safety standard DOT MVSS-116*.

[7/1/97; 19.15.104.9 NMAC - Rn, 19 NMAC 15.104.9, 05/29/09; A, 08/16/10]

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.56 NMAC, Sections 14 and 15, effective August 16, 2010

21.17.56.14 [APPLICATION OF A RESTRICTED-USE, PHENOXY HERBICIDE IN REGULATED COUNTIES:

A. Between April 1 and October 30, no person shall apply a restricted-use, phenoxy herbicide in the counties of Curry or Roosevelt unless a permit has been obtained from the director provided a permit is not required for spot applications made with equipment which is non-motorized or has a tank capacity of 15 gallons or less of diluted pesticide.

B. Permits shall be issued only to pesticide applicators licensed and certified in New Mexico by the New Mexico department of agriculture.

C. A legal description of the land is required before the permit can be issued.

D. Permits for the application of ester formulations of restricted-use, phenoxy herbicides in Curry or Roosevelt counties shall not be issued from April 15 through October 1, provided the director may establish a different date dependent on weather and planting factors if the landowner provides justification for ester formulation use outside of the established dates.

E. The application of restricted-use, phenoxy herbicides by aircraft shall be prohibited in Roosevelt county from April 15 through October 1.

F. It shall be unlawful for any commercial pesticide applicator to make a permitted application of a restricted-use, phenoxy herbicide unless the landowner or persons in control of the land or crops for which he is making the application has been notified prior to the application of the date and time of application and the brand name and EPA registration number of the chemical to be applied.

G. All permits expire 30 days after issuance provided the permit may be extended by the department.

H. No person shall apply restricted-use, phenoxy herbicides when the wind velocity exceeds ten (10) miles per hour

or other weather conditions are favorable for drift or volatilization to susceptible crops.

I. The application of restricted-use, phenoxy herbicides in dust form shall be prohibited.

J. The application of restricted-use, phenoxy herbicides by mist blower or similar type of application equipment shall be prohibited, except where mist blowers are equipped with a control droplet applicator set to deliver spray droplet sizes of 200 microns or greater.

K. Permits shall not be issued for restricted-use, phenoxy herbicides to be applied through sprinkler irrigation water during the period from April 15 to October 1. [RESERVED]

[1/21/79, 11/21/79, 3/27/80, 5/18/87, 2/19/88, 3/30/89, 12/1/96; 21.17.56.14 NMAC - Rn & A, 21 NMAC 17.56.14, 02/28/07; Repealed, 08/16/10]

21.17.56.15 APPLICATOR RECORDS:

A. Any New Mexico licensed and certified pesticide applicator [issued a restricted-use, phenoxy herbicide permit] shall maintain the following records for two years for all [applicable permitted] pesticide applications:

(1) all records as required under 21.17.50.10 NMAC for restricted use pesticides;

(2) [permit number under which the application is authorized;] other records not listed above, when required by the worker protection standard, CFR 140, under authority of the federal Insecticide, Fungicide, and Rodenticide Act; and

(3) [total acreage treated] other records not listed above, when required under the United States department of agriculture private applicator recordkeeping program.

B. For [permitted] pesticide applications made by a commercial pesticide applicator, application information shall be exchanged in the timeframe and manner specified with any landowner who is an agricultural employer under 40 CFR Part 170, the federal worker protection standard. [11/21/79, 3/27/80, 5/18/87; 21.17.56.15 NMAC - Rn & A, 21 NMAC 17.56.15, 02/28/07; A, 08/16/10]

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.60 NMAC, Sections 1, 2, 6, 7, & 12 through 27, which includes four new additional sections, effective 8/30/10.

20.11.60.1 ISSUING AGENCY: Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) [768-2600] 768-2601.
[20.11.60.1 NMAC - Rp, 20.11.60.1 NMAC, 1/23/06; A, 8/30/10]

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

B. Exempt: 20.11.60 NMAC does not apply to sources within Bernalillo county, which are located on indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.
[20.11.60.2 NMAC - Rp, 20.11.60.2 NMAC, 1/23/06; A, 8/30/10]

20.11.60.6 OBJECTIVE : ~~[The objective of 20.11.60 NMAC is]~~ To implement a pre-construction permit program for new or modified major stationary sources that ~~wish~~ plan to locate in an area where federal ambient air quality standards are being exceeded.
[20.11.60.6 NMAC - Rp, 20.11.60.6 NMAC, 1/23/06; A, 8/30/10]

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

A. "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with ~~[the following]~~ Paragraphs (1)-(3) of Subsection A of 20.11.60.7 NMAC, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limit under ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC. Instead, Subsections E and II of 20.11.60.7 NMAC shall apply for those purposes.

(1) In general, actual emissions

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

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

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

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

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

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

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

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

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

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

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

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

(1)-(4) of Subsection E of 20.11.60.7 NMAC.

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

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

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

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

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

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

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

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

during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of Subsection D of 20.11.60.18 NMAC Paragraph (7) of Subsection B of 20.11.60.15 NMAC.

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

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

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

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

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

term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

G. "Best available control technology (BACT)" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

H. "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group," that is, which have the same two-digit code, as described in the *standard industrial classification manual*, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers ~~4101-0066~~ 4101-0065 and 003-005-00176-0, respectively).

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

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

within a reasonable time; or

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

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

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

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

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

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

O. "Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric steam generating unit as defined in Subsection N of 20.11.60.7 NMAC. For purposes of 20.11.60.7 NMAC, there are two types of emissions units as described in Paragraphs (1) and (2) of Subsection O of 20.11.60.7 NMAC.

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

unit first operated.

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

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

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

R. “Federally enforceable” means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including [40 CFR 51.165 and 40 CFR 51.166] operating permits issued under an EPA-approved program that requires adherence to any permit issued under such program.

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

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

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

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

U. “Major modification” means:

(1) Any physical change in or change in the method of operation of a major stationary source that would result in:

(a) a significant emissions increase of a regulated new source review pollutant; and

(b) a significant net emissions increase of that pollutant from the major stationary source.

(2) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

[(+)](3) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

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

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

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

(e) use of an alternative fuel or raw material by a stationary source which;

(i) the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to [40 CFR 51.165] 40 CFR Subpart I or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

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

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

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which [is] the project is located and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

[(2)](4) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under [20.11.60.23 NMAC] 20.11.60.27 NMAC for a plantwide applicability limit for that pollutant. Instead,

the definition at Paragraph (8) of Subsection B of [20.11.60.23 NMAC] 20.11.60.27 NMAC shall apply.

(5) For the purpose of applying the requirements of 20.11.60.17 NMAC to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to Subpart 2, Part D, Title I of the act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(6) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the act.

V. “Major stationary source” [shall have the following meanings:]

(1) Means:

[(+)](a) Any stationary source of air pollutants [which] that emits, or has the potential to emit, 100 tons per year or more of any regulated new source review pollutant, [subject to regulation under the federal Clean Air Act; or] except that lower emission thresholds shall apply in areas subject to Subpart 2, Subpart 3, or Subpart 4 of Part D, Title I of the act, according to Items (i)-(vi) of Subparagraph (a) of Paragraph (1) of Subsection V of 20.11.60.7 NMAC.

(i) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(ii) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(iii) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(iv) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(v) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the administrator).

(vi) 70 tons per year of PM₁₀ in any serious nonattainment area for PM₁₀.

(b) For the purposes of applying the requirements of 20.11.60.17 NMAC to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary

source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in Items (i)-(vi) of Subparagraph (b) of Paragraph (1) of Subsection V of 20.11.60.7 NMAC shall apply in areas subject to Subpart 2 of Part D, Title I of the act.

(i) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) 100 tons per year or more of nitrogen oxides in any area designated under Section 107(d) of the act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

[(2)] (c) any physical change that would occur at a stationary source not qualifying under Subparagraph (a) or (b) of Paragraph (1) of Subsection V of 20.11.60.7 NMAC as a major stationary source, if the change would constitute a major stationary source by itself.

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

[(4)] (3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of Subsection V of 20.11.60.7 NMAC whether it is a major stationary source [due to fugitive emissions, to the extent they are quantifiable], unless the source belongs to one of the following categories of stationary sources:

(a) [any category in Subsection B of 20.11.60.22 NMAC; or] carbon black plants (furnace process);

(b) charcoal production plants;

(c) chemical process plants – not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(d) coal cleaning plants (with thermal dryers);

(e) coke oven batteries;

(f) fossil fuel-fired steam electric plants of more than 250 million Btu/hr heat input;

(g) fossil fuel boilers (or combination thereof) totaling more than 250 million Btu/hr heat input;

(h) fuel conversion plants;

(i) glass fiber processing plants;

(j) hydrofluoric acid plants;

(k) iron and steel mill plants;

(l) kraft pulp mills;

(m) lime plants;

(n) municipal incinerators capable of charging more than 250 tons of refuse per day;

(o) nitric acid plants;

(p) petroleum refineries;

(q) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(r) phosphate rock processing plants;

(s) Portland cement plant;

(t) primary lead smelters;

(u) primary zinc smelters;

(v) primary aluminum ore reduction plants;

(w) primary copper smelters;

(x) secondary metal production plants;

(y) sintering plants;

(z) sulfur recovery plants;

(aa) sulfuric acid plants;

(bb) taconite ore processing plants; or

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

[(5) A stationary source shall not be a major stationary source due to secondary emissions.]

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

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

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

Z. “Net emissions increase” [shall have the following meanings:]

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

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

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases under Subparagraph (b) of Paragraph (1) of Subsection Z of 20.11.60.7 NMAC, shall be determined as provided in Subsection E of 20.11.60.7 NMAC, except that Subparagraphs (c) of Paragraph (1) and (d) of Paragraph (2) of Subsection E of 20.11.60.7 NMAC shall not apply.

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

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

(a) it occurs [within the time period] between:

(i) the date five years prior to the commencement of construction on the particular change; and

(ii) the date that the increase from the particular change occurs; and

(b) [either] the department [or the administrator] has not relied on it in issuing a permit for the source under [approved] regulations [and] approved pursuant to 40 CFR 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs.

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

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

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

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

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

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

(6) An increase that results from

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

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

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

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

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

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

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

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

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

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

II. "Projected actual emissions"

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

(2) In determining the projected actual emissions under Paragraph (1) of Subsection II of 20.11.60.7 NMAC, before beginning actual construction, the owner or operator of the major stationary source:

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

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

[(3)] (c) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection E of 20.11.60.7 NMAC and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

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

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

(1) nitrogen oxides or any volatile organic compounds;

(2) any pollutant for which a

national ambient air quality standard has been promulgated; or

(3) any pollutant that is a constituent or precursor of a general pollutant listed [in] under Paragraphs (1) or (2) of Subsection JJ of 20.11.60.7 NMAC, provided that [a] such constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant; precursors identified by the administrator for purposes of NSR are the following:

(a) volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

(b) sulfur dioxide is a precursor to PM_{2.5} in all PM_{2.5} nonattainment areas;

(c) nitrogen oxides are presumed to be precursors to PM_{2.5} in all PM_{2.5} nonattainment areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM_{2.5} concentrations;

(d) volatile organic compounds and ammonia are presumed not to be precursors to PM_{2.5} in any PM_{2.5} nonattainment area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM_{2.5} concentrations; or

(4) PM_{2.5} emissions and PM₁₀ emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM_{2.5} and PM₁₀ in nonattainment major NSR permits; compliance with emissions limitations for PM_{2.5} and PM₁₀ issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

KK. "Replacement unit" means an emission unit for which all of the [following] criteria listed in Paragraphs (1)-(4) of Subsection KK of 20.11.60.7 NMAC are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit

completely takes the place of an existing emissions unit.

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

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

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

LL. “Secondary emissions” means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of ~~[Subsection LL of]~~ 20.11.60.7 NMAC, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

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

(1) Pollutant emission rates:

~~[(1)]~~(a) carbon monoxide, 100 tons per year;

~~[(2)]~~(b) nitrogen oxides, 40 tons per year;

~~[(3)]~~(c) sulfur dioxide, 40 tons per year;

~~[(4)]~~(d) PM₁₀ emissions, 15 tons per year;

~~[(5)]~~(e) ozone, 40 tons per year of volatile organic compounds or nitrogen oxides; or

~~[(6)]~~(f) lead, 0.6 tons per year; or

(g) PM_{2.5} 10 tons per year of direct PM_{2.5} emissions; 40 tons per year of sulfur dioxide emissions; 40 tons per year of nitrogen oxide emissions unless demonstrated not to be a PM_{2.5} precursor under Subsection JJ of 20.11.60.7 NMAC.

(2) Notwithstanding the significant emissions rate for ozone in Paragraph (1) of Subsection MM of 20.11.60.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

(3) For the purposes of applying the requirements of 20.11.60.17 NMAC to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in Paragraphs (1), (2), and (5) of Subsection MM of 20.11.60.7 NMAC shall apply to nitrogen oxides emissions.

(4) Notwithstanding the significant emissions rate for carbon monoxide under Paragraph (1) of Subsection MM of 20.11.60.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(5) Notwithstanding the significant emissions rates for ozone under Paragraphs (1) and (2) of Subsection MM of 20.11.60.7 NMAC, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the act shall be considered a significant net emissions increase.

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

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

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

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

[20.11.60.7 NMAC - Rp, 20.11.60.7 NMAC, 1/23/06; A, 8/30/10]

20.11.60.12 APPLICABILITY:

A. Any person constructing any new major stationary source or major modification shall obtain a permit from the department in accordance with the requirements of 20.11.60 NMAC prior to the start of construction or modification if either of the following conditions ~~[applies]~~ under Paragraph (1) or (2) of Subsection A of 20.11.60.12 NMAC apply.

(1) Sources that would locate in a designated nonattainment area. The proposed major stationary source or major modification ~~[with]~~ would be located within a nonattainment area so designated pursuant to Section 107(d)(1)(A)(i) of the federal Clean Air Act and ~~[with]~~ would emit a regulated new source review pollutant for which it is major and for which the area is designated nonattainment ~~[for, or]~~.

(2) Sources locating in designated clean or unclassifiable areas which would cause or contribute to a violation of a NAAQS.

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

(b) A major source or major modification will be considered to cause or contribute to a violation of a NAAQS when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Significant ambient concentrations:

Pollutant	Averaging Time				
	<u>Annual</u>	<u>24-hr</u>	<u>8-hr</u>	<u>3-hr</u>	<u>1-hr</u>
Sulfur Dioxide	1.0 µg/m ³	5 µg/m ³	--	25 µg/m ³	--
PM ₁₀	1.0 µg/m ³	5 µg/m ³	--	--	--
Nitrogen Dioxide	1.0 µg/m ³	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m ³	--	2 mg/m ³

(3) A proposed major source or major modification subject to Subsection A of 20.11.60.12 NMAC may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, the department shall deny the proposed construction.

(4) The requirements of Subsection A of 20.11.60.12 NMAC shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107 of the act.

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

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

~~_____~~ **D.** Other requirements.

(1) A new major stationary source or major modification which meets the criteria of Paragraph (2) of Subsection A of 20.11.60.12 NMAC shall demonstrate that the source or modification will not cause or contribute to a violation of any national ambient air quality standard by meeting the following requirements and no others of 20.11.60 NMAC:

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

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

_____ (c) 20.11.60.17 NMAC - Emission Offset Baseline;

_____ (d) 20.11.60.18 NMAC - Emission Offset; and

_____ (e) 20.11.60.20 NMAC - Air Quality Benefit.

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

[E:]B. Applicability procedures.

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

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e. the first step of the process) will occur depends upon the type of emissions units being modified, according to [Paragraphs (3) and (4) of Subsection E of 20.11.60.12] Paragraphs (3), (4) and (6) of Subsection B of 20.11.60.12 NMAC. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e. the second step of the process) is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

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

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

_____ (5) [Reserved]

(6) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of Subsection B of 20.11.60.12 NMAC as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant (as defined in Subsection MM of 20.11.60.7 NMAC).

[~~(5)~~]C. For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under [20.11.60.23 NMAC] 20.11.60.27 NMAC.

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

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

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

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

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

_____ (3) The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified in Subparagraph (b) of Paragraph (1) of Subsection F of 20.11.60.12 NMAC; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

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

_____ (5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of Subsection F of 20.11.60.12 NMAC, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of Subsection F of 20.11.60.12 NMAC) by a significant amount for that regulated new source review pollutant,

and if such emissions differ from the preconstruction projection (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of Subsection F of 20.11.60.12 NMAC). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

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

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

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

_____ G. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection F of 20.11.60.12 NMAC available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii). [20.11.60.12 NMAC - N, 1/23/06; A, 8/30/10]

20.11.60.13 S O U R C E OBLIGATION AND ENFORCEABLE PROCEDURES:

A. [The requirements of this 20.11.60 NMAC shall apply as though construction had not yet commenced at the time that a source or modification becomes a major source or major modification solely due to a relaxation in any enforceable limitation established after August 7, 1980.] At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to 20.11.60 NMAC shall apply to the source or modification as though construction had not yet commenced on the source or modification.

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

74-2-17, NMSA 1978, and any applicable regulations of the board.

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

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

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

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

[20.11.60.13 NMAC - Rp, 20.11.60.12 NMAC, 1/23/06; A, 8/30/10]

20.11.60.14 F U G I T I V E EMISSIONS:

The provisions of 20.11.60 NMAC do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emission to the extent quantifiable are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

_____ A. carbon black plants (furnace process);

_____ B. charcoal production plants;

_____ C. chemical process plants – not including ethanol production facilities

that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

D. coal cleaning plants (with thermal dryers);

E. coke oven batteries;

F. fossil fuel-fired steam electric plants of more than 250 million Btu/hr heat input;

G. fossil fuel boilers (or combination thereof) totaling more than 250 million Btu/hr heat input;

H. fuel conversion plants;

L. glass fiber processing plants;

J. hydrofluoric acid plants;

K. iron and steel mill plants;

L. kraft pulp mills;

M. lime plants;

N. municipal incinerators capable of charging more than 250 tons of refuse per day;

O. nitric acid plants;

P. petroleum refineries;

Q. petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

R. phosphate rock processing plants;

S. Portland cement plant;

T. primary lead smelters;

U. primary zinc smelters;

V. primary aluminum ore reduction plants;

W. primary copper smelters;

X. secondary metal production plants;

Y. sintering plants;

Z. sulfur recovery plants;

AA. sulfuric acid plants;

BB. taconite ore processing plants; or

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

[20.11.60.14 NMAC - Rp. 20.11.60.13, 1/23/06; 20.11.60.14 NMAC - N, 8/30/10]

20.11.60.15 BASELINE FOR DETERMINING CREDIT FOR EMISSION AND AIR QUALITY OFFSETS:

A. For sources and modifications subject to any preconstruction review program adopted pursuant to 20.11.60 NMAC, the baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan (SIP) in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(1) the demonstration of

reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(2) the applicable SIP does not contain an emissions limitation for that source or source category.

B. Combustion of fuels.

(1) Where the emissions limit under the applicable SIP allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

(2) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable SIP for the type of fuel being burned at the time the permit application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure, which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The department should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

(3) Emission reduction credit from shutdowns and curtailments.

(a) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in Items (i) and (ii) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC.

(i) Such reductions are surplus, permanent, quantifiable, and federally enforceable.

(ii) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of Item (ii) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC, the department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(b) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in Item (ii) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC may be generally credited only if:

(i) the shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(ii) the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of Item (i) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC.

(4) No emissions credit shall be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's *Recommended Policy on Control of Volatile Organic Compounds* (42 FR 35314, July 8, 1977) and any amendments thereto.

(5) All emission reductions claimed as offset credit shall be federally enforceable.

(6) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR Part 51 Appendix S Section IV.D.

(7) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the department has not relied on it in demonstration attainment or reasonable further progress.

(8) [Reserved]

(9) [Reserved]

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

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

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

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

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

(3) the effective date of the reduction.

[20.11.60.15 NMAC - Rp. 20.11.60.14 NMAC, 1/23/06; 20.11.60.15 NMAC - N, 8/30/10]

20.11.60.16 PROVISIONS FOR PROJECTED ACTUAL EMISSIONS:

Except as otherwise provided in Subsection F of 20.11.60.16 NMAC, the following specific provisions apply with respect to any regulated new source review pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Subsection F of 20.11.60.16 NMAC, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in Subparagraphs (a), (b) and (c) of Paragraph (2) of Subsection II of 20.11.60.7 NMAC for calculating projected actual emissions. Deviations from these provisions will be approved only if the department specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in Subsections A through F of 20.11.60.16 NMAC.

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

(1) a description of the project;

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

(3) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Subparagraph (c) of Paragraph (2) of Subsection II of 20.11.60.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

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

C. The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified in Subparagraph (a) of Paragraph (2) of Subsection A of 20.11.60.16 NMAC; and

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

D. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Subsection C of 20.11.60.16 NMAC setting out the unit's annual emissions during the year that preceded submission of the report.

E. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Subsection A of 20.11.60.16 NMAC, exceed the baseline actual emissions (as documented and maintained pursuant to Paragraph (3) of Subsection A of 20.11.60.16 NMAC) by a significant amount for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection (as documented and maintained pursuant to Paragraph (3) of Subsection A of 20.11.60.16 NMAC). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

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

(2) the annual emissions as calculated pursuant to Subsection C of 20.11.60.16 NMAC; and

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

F. A "reasonable possibility" under 20.11.60.16 NMAC occurs when the owner or operator calculates the project to result in either:

(1) a projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection NN of 20.11.60.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated new source review pollutant; or

(2) a projected actual emissions increase that, added to the amount of emissions excluded under Subparagraph (c) of Paragraph (2) of Subsection II of 20.11.60.7 NMAC, sums to at least 50 percent of the amount that is a "significant emissions

increase," as defined under Subsection NN of 20.11.60.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated new source review pollutant; for a project for which a reasonable possibility occurs only within the meaning of Paragraph (2) of Subsection F of 20.11.60.16 NMAC, and not also within the meaning of Paragraph (1) of Subsection F of 20.11.60.16 NMAC, then the provisions in Subsections B through E of 20.11.60.16 NMAC do not apply to the project.

G. Information requests.

The owner or operator of the source shall make the information required to be documented and maintained pursuant to 20.11.60.16 NMAC available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

[20.11.60.16 NMAC - Rp, 20.11.60.15 NMAC, 1/23/06; 20.11.60.16 NMAC - N, 8/30/10]

20.11.60.17 [EMISSION-OFFSET

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

ADDITIONAL PROVISIONS FOR EMISSIONS OF NITROGEN OXIDES IN OZONE TRANSPORT REGIONS AND NONATTAINMENT AREAS:

The requirements of 20.11.60 NMAC applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the administrator has granted a NO_x waiver applying the standards set forth under Section 182(f) of the act and the waiver continues to apply.

[20.11.60.17 NMAC - Rp, 20.11.60.16 NMAC, 1/23/06; Repealed 8/30/10;

20.11.60.17 NMAC - N, 8/30/10]

20.11.60.18 [EMISSION OFFSETS: All emission offsets approved by the department shall meet the following criteria:

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

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

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

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

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

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

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

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

produces more pollution, is specified in a permit issued by the department

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

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

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

(3) the effective date of the reduction:

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

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

EMISSIONS OFFSET RATIOS.

A. In meeting the emissions offset requirements of 20.11.60.15 NMAC, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in Subsections B through D of 20.11.60.18 NMAC.

B. In meeting the emissions offset requirements of 20.11.60.15 NMAC for ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(1) in any marginal nonattainment area for ozone—at least 1.1:1;

(2) in any moderate nonattainment area for ozone—at least 1.15:1;

(3) in any serious nonattainment area for ozone—at least 1.2:1;

(4) in any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(5) in any extreme nonattainment area for ozone—at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

C. Notwithstanding the requirements of Subsection B of 20.11.60.18

NMAC for meeting the requirements of 20.11.60.15 NMAC, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to Subpart 2, Part D, Title I of the act, except for serious, severe, and extreme ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the act.

D. In meeting the emissions offset requirements of 20.11.60.15 NMAC for ozone nonattainment areas that are subject to Subpart 1, Part D, Title I of the act (but are not subject to Subpart 2, Part D, Title I of the act, including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.

[20.11.60.18 NMAC - Rp, 20.11.60.17 NMAC, 1/23/06; Repealed 8/30/10; 20.11.60.18 NMAC - N, 8/30/10]

20.11.60.19 PM₁₀ PRECURSORS.

The requirements of 20.11.60 NMAC applicable to major stationary sources and major modifications of PM₁₀ shall also apply to major stationary sources and major modifications of PM₁₀ precursors, except where the administrator determines that such sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ ambient standards in the area.

[20.11.60.19 NMAC - Rp, 20.11.60.18 NMAC, 1/23/06; 20.11.60.19 NMAC - N, 8/30/10]

20.11.60.20 INTERPRECURSOR OFFSETTING.

In meeting the emissions offset requirements of 20.11.60.15 NMAC and Subsections A-D of 20.11.60.18 NMAC, the emissions offsets obtained shall be for the same regulated new source review pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in 20.11.60.20 NMAC. The offset requirements in 20.11.60.15 NMAC for direct PM_{2.5} emissions or emissions of precursors of PM_{2.5} may be satisfied by offsetting reductions of direct PM_{2.5} emissions or emissions of any PM_{2.5} precursor identified under Paragraph (3) of Subsection JJ of 20.11.60.7 NMAC if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

[20.11.60.20 NMAC - Rp, 20.11.60.19 NMAC, 1/23/06; 20.11.60.20 NMAC - N, 8/30/10]

[20.11.60.14] 20.11.60.21

APPLICATION CONTENTS: The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required

under 20.11.60 NMAC. The following items are required before the department may deem an application administratively complete. All applications shall include:

- A. all information required by Subsection A of 20.11.41.13 NMAC; and
- B. a detailed schedule for construction of the major stationary source or major modification; and
- C. a detailed description of the planned system of continuous emission reduction to be implemented, emission estimates, and other information necessary to demonstrate that the lowest achievable emission rate or any other applicable emission limitation will be maintained.

[20.11.60.21 NMAC - Rp, 20.11.60.20 NMAC, 1/23/06; 20.11.60.21 NMAC - Rn, 20.11.60.14 NMAC, 8/30/10]

20.11.60.22 [TABLES:

~~A.~~ Significant Ambient Concentrations:

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

~~B.~~ Fugitive emissions source categories:

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

~~[20.11.60.15] SOURCE REQUIREMENTS FOR SOURCES THAT WOULD LOCATE IN A DESIGNATED NONATTAINMENT~~

AREA: [In order for a permit to be granted, all of the following conditions shall be met:]

A. Conditions for approval. If the department finds that the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.300 *et seq* as nonattainment for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

[A:](1) Condition 1. The major stationary source or major modification shall [be designed such that the] meet an emission limitation which specifies the lowest achievable emission rate (LAER) [will be met and maintained for each pollutant emitted which is subject to 20.11.60 NMAC:] for such source.

[B:](2) Condition 2. The [owner or operator of the proposed new or modified source has demonstrated] applicant must certify that all existing major stationary sources owned or operated by [such person] the applicant (or any entity controlling, controlled by, or under common control with [such person] the applicant) in [this state] the same state as the proposed source are in compliance with, [or on a schedule for compliance with], all applicable emission limitations and standards, under the federal Clean Air Act [, and all conditions in a federally enforceable permit] (or are in compliance with an expeditious schedule which is federally enforceable or contained in a court decree).

~~[C.] Emission Reductions:~~

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

(2) A new major stationary source or major modification which is subject to the requirements of Subsection D of 20.11.60.12 NMAC shall obtain sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major stationary source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard.]

(3) **Condition 3.** Emission reductions (offsets) from existing sources in the area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS. Except as provided in 20.11.60.20 NMAC (addressing PM_{2.5} and its precursors). Only intrapollutant emission offsets will be acceptable (e.g., hydrocarbon increases may not be offset against SO₂ reductions).

[~~D~~](4) **Condition 4.** The emission offsets shall provide a positive net air quality benefit in the affected area (where the national ambient air quality standard for that pollutant is violated). [~~and~~] Atmospheric simulation modeling is not necessary for volatile organic compounds and NOx. Fulfillment of "condition 3" at Paragraph (3) of Subsection A of 20.11.60.22 NMAC and "location of offsetting emissions" requirements at Subsection B of 20.11.60.22 NMAC, will be considered adequate to meet this condition.

B. Location of offsetting emissions. The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under 20.11.60 NMAC for increased emissions of any air pollutant only by obtaining emissions reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the department may allow the owner or operator of a source to obtain

such emissions reductions in another nonattainment area if the conditions in Paragraph (1) and (2) of Subsection B of 20.11.60.22 NMAC are met.

(1) The other area has an equal or higher nonattainment classification than the area in which the source is located.

(2) Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

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

[~~F~~]**D.** The proposed major stationary source or major modification [with] shall meet all applicable emission requirements in the New Mexico state implementation plan, any applicable new source performance standard in 40 CFR Part 60, and any national emission standard for hazardous air pollutants in 40 CFR Part 61 or 40 CFR Part 63.

E. Emission reductions:

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

(2) A new major stationary source or major modification which is subject to the requirements of Subsection D of 20.11.60.12 NMAC shall obtain sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major stationary source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard.

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

8/30/10; 20.11.60.22 NMAC - Rn & A, 20.11.60.15 NMAC, 8/30/10]

[20.11.60.16] 20.11.60.23

ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING MANDATORY FEDERAL CLASS I AREAS:

A. The requirements of 20.11.60.[46]23 NMAC apply only to proposed major stationary sources or major modifications that meet the criteria of Paragraph (1) of Subsection A of 20.11.60.12 NMAC and that also are major stationary sources or major modifications as defined in 20.11.61 NMAC. A major stationary source or major modification which meets the criteria of Paragraph (2) of Subsection A of 20.11.60.12 NMAC may be subject to requirements for federal class I areas in 20.11.61 NMAC, if applicable.

B. The department shall transmit to the administrator and any affected federal land manager a copy of each permit application and any information relevant to any proposed major stationary source or major modification which may have an impact on visibility in any mandatory federal class I area. Relevant information will include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The application shall be transmitted within 30 days of receipt by the department and at least 60 days prior to any public hearing on the application. Additionally, the department shall notify any affected federal land manager within 30 days from the date the department receives a request for a pre-application meeting from a proposed source subject to 20.11.60 NMAC. The department shall consult with the affected federal land manager prior to making a determination of completeness for any such permit application. The department shall also provide the federal land manager and the administrator with a copy of the preliminary determination on the permit application and shall make available to them any materials used in making that determination.

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

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

(1) visibility monitoring methods

specified by the department shall be reasonably available and not require any research and development; and

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

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

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

[20.11.60.23 NMAC - N, 1/23/06; 20.11.60.23 NMAC - Rn & A, 20.11.60.16 NMAC, 8/30/10]

[20.11.60.19] 20.11.60.24 BANKING OF EMISSION REDUCTION:

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

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

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

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

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

C. The department shall:

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

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

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

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

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

D. Use and sale of emission reductions.

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

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

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

(4) The use of preserved emission reduction credits is subject to the criteria of ~~[20.11.60.18 NMAC, Emission Offsets]~~ 20.11.60 NMAC.

[20.11.60.24 NMAC - Rn & A, 20.11.60.19 NMAC, 8/30/10]

[20.11.60.20] 20.11.60.25 A I R QUALITY BENEFIT: All demonstrations of the occurrence of a net air quality benefit shall meet the following criteria.

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

B. An applicant which proposes emission offsets for sulfur dioxide, particulate matter, carbon monoxide,

nitrogen oxides, or any other pollutant may be required by the department to submit atmospheric dispersion modeling to demonstrate a net air quality benefit will occur. For any case involving these pollutants where stack emissions and fugitive or ground level emissions are offsetting, atmospheric dispersion modeling shall be required to demonstrate a net air quality benefit will occur.

[20.11.60.25 NMAC - Rn, 20.11.60.20 NMAC, 8/30/10]

[20.11.60.21] 20.11.60.26

PUBLIC PARTICIPATION AND NOTIFICATION:

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

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

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

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

B. The department shall:

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

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

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

(4) Send a copy of the notice of public comment to the applicant, the administrator, and to officials and agencies having jurisdiction over the location where

the proposed construction would occur as follows: any other state or local air pollution control agencies, the chief executives of the city and county where the source would be located, any regional comprehensive land use planning agency, and any state, federal land manager, or indian governing body whose lands may be affected by emissions from the source or modification.

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

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

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

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

(b) notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the department made available preconstruction information and public comments relating to the source. [20.11.60.26 NMAC - Rn, 20.11.60.21 NMAC, 8/30/10]

~~[20.11.60.23]~~ **20.11.60.27 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs)**

A. Applicability.

(1) The department may approve the use of an actuals PAL for any existing major stationary source (except as provided in Paragraph (2) of Subsection A of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC) if the PAL meets the requirements of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC. The term "PAL" shall mean "actuals PAL" throughout ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

(2) ~~An actuals [PALs shall not be allowed]~~ PAL for VOC or NO_x ~~shall not be allowed~~ for any major stationary source located in an extreme ozone nonattainment area.

(3) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level,

meets the requirements of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC, and complies with the PAL permit:

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

(b) does not have to be approved through the requirements of 20.11.60 NMAC; and

(c) is not subject to the provisions in ~~[20.11.60.13 NMAC]~~ Subsection A of 20.11.60.13 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major new source review program).

(4) Except as provided under Subparagraph (c) of Paragraph (3) of Subsection A of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions. When a term is not defined in Subsection B of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC, it shall have the meaning given in 20.11.60.7 NMAC or in 20.11.1 NMAC.

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

(2) **Allowable emissions** means "allowable emissions" as defined in Subsection D of 20.11.60.7 NMAC, except as this definition is modified according to ~~[the following]~~ Subparagraph (a) and (b) of Paragraph (2) of Subsection B of 20.11.60.27 NMAC.

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

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

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

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

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

(b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than

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

(5) **Plantwide applicability limitation (PAL)** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source that is enforceable as a practical matter and established source-wide in accordance with ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

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

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

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

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

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

(11) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection MM of 20.11.60.7 NMAC or in the federal Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of Subsection B of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

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

(1) A list of all emissions units at

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

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

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

D. General requirements for establishing PALs.

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

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

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

(c) The PAL permit shall contain all the requirements of Subsection G of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

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

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

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

(g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in

Subsection L through N of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC for each emissions unit under the PAL through the PAL effective period.

(2) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under ~~[20.11.60.18 NMAC]~~ Subsection B of 20.11.60.15 NMAC unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

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

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of Subsection F of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in 20.11.60.7 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection UU of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC or under the federal Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO_x to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units

(which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of Subsection F of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

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

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

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

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Subsection J of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

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

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of Subsection I of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Subsection L of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

(8) A requirement to retain the records required under Subsection M of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC by the required deadlines.

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

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

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

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

(a) During the PAL effective period, the department shall reopen the PAL permit to:

(i) ~~correct typographical/ calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;~~

(ii) ~~reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under [20.11.60.18 NMAC] 20.11.60.15 NMAC;~~ or

(iii) ~~revise the PAL to reflect an increase in the PAL as provided under Subsection K of [20.11.60.23 NMAC] 20.11.60.27 NMAC.~~

(b) The department may reopen the PAL permit to:

(i) ~~reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;~~

(ii) ~~to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source under [this Part] 20.11.60 NMAC;~~ or

(iii) ~~to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.~~

(c) Except for the permit reopening in Subparagraph (a) of Paragraph (2) of Subsection H of [20.11.60.23 NMAC] 20.11.60.27 NMAC for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Subsection E of [20.11.60.23 NMAC] 20.11.60.27 NMAC.

I. Expiration of a PAL.

Any PAL which is not renewed in accordance with the procedures in Subsection J of [20.11.60.23 NMAC] 20.11.60.27 NMAC shall expire at the end of the PAL effective period, and the following requirements shall apply.

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

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of [20.11.60.23 NMAC] 20.11.60.27 NMAC, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit

(or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of [20.11.60.23 NMAC] 20.11.60.27 NMAC, such distribution shall be made as if the PAL had been adjusted.

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

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

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (a) of Paragraph (1) of Subsection I of [20.11.60.23 NMAC] 20.11.60.27 NMAC, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

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

(5) The major stationary source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 20.11.60.12 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (3) of Subsection A of [20.11.60.23 NMAC] 20.11.60.27 NMAC.

J. Renewal of a PAL.

(1) The department shall follow the procedures specified in Subsection E of [20.11.60.23 NMAC] 20.11.60.27 NMAC in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During

such public review, any person may propose a PAL level for the source for consideration by the department.

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

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

(a) The information required in Paragraphs (1) through (3) of Subsection C of [20.11.60.23 NMAC] 20.11.60.27 NMAC.

(b) A proposed PAL level.

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

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

(4) **PAL adjustment.** In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraph (a) of Paragraph (4) of Subsection J of [20.11.60.23 NMAC] 20.11.60.27 NMAC. However, in no case may any such adjustment fail to comply with Subparagraph (b) of Paragraph (4) of Subsection J of [20.11.60.23 NMAC] 20.11.60.27 NMAC.

(a) If the emissions level calculated in accordance with Subsection F of [20.11.60.23 NMAC] 20.11.60.27 NMAC is equal to or greater than 80 percent of the PAL level, the department may[:

(a) ~~renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of Paragraph (4) of Subsection J of [20.11.60.23 NMAC] 20.11.60.27 NMAC;~~ or

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

(c) Notwithstanding Paragraph (4) of Subsection J of [20.11.60.23 NMAC]

20.11.60.27 NMAC,

(i) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Subsection K of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC, *Increasing a PAL during the PAL effective period*.

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

K. Increasing a PAL during the PAL effective period.

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

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

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

(c) The owner or operator shall obtain a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of Paragraph (1) of Subsection K of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall

comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

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

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of Subsection K of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

L. Monitoring requirements for PALs.

(1) General Requirements.

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

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Subparagraphs (a) through (d) of Paragraph (2) of Subsection L of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of Paragraph (1) of Subsection L of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC, the owner or operator may also employ an alternative monitoring approach that meets Subparagraph (a) of Paragraph (1) of Subsection L of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC renders the PAL invalid.

(2) Minimum performance requirements for approved monitoring

approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of Subsection L of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC:

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

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

(3) Mass balance calculations.

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

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

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

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

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

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

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

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

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

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

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

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

(b) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

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

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

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of Subsection L of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

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

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

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

M. Record keeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

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

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

to the PAL; and

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

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the requirements of 20.11.42 NMAC. The reports shall meet the following requirements.

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

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

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

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

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

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

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC.

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

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

information:

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

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

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

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

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

O. Transition requirements.

(1) The department shall not issue a PAL that does not comply with the requirements of ~~[20.11.60.23 NMAC]~~ 20.11.60.27 NMAC after the administrator has approved ~~[these]~~ regulations incorporating these requirements into the SIP.

(2) The department may supersede any PAL which was established prior to the date of approval of 20.11.60 NMAC by the administrator with a PAL that complies with the requirements of ~~[this section]~~ 20.11.60.27 NMAC.
[20.11.60.27 NMAC - Rn & A, 20.11.60.23 NMAC, 8/30/10]

ALBUQUERQUE- BERNALILLO COUNTY AIR-QUALITY CONTROL BOARD

This is an amendment to 20.11.61 NMAC, Sections 1, 2, 7, 11, 12, 14-21, & 23-31, effective 8/30/10.

20.11.61.1 ISSUING AGENCY: Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) ~~[768-2600]~~ 768-2601.

[20.11.61.1 NMAC - Rp, 20.11.61.1 NMAC, 1/23/06; A, 8/30/10]

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

A. Exempt:

(1) sources within Bernalillo

county which are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction;

(2) each regulated new source review pollutant emitted by a source or modification located in a nonattainment area for that pollutant;

(3) after a public hearing, consistent with the public notice and participation provisions of 20.11.41 NMAC, *Authority-to-Construct*, the board may exempt major stationary sources or major modifications ~~[that are part of] if:~~

(a) the major stationary source would be a nonprofit health or nonprofit educational [institutions] institution, or a major modification that would occur at such an institution; or

[(4)] (b) the source or modification is a portable stationary source which has previously received a permit pursuant to 20.11.61 NMAC [; and] if:

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

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

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

[(d)] (iv) reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location; such notice shall be given to the department not less than 10 days in advance of the proposed relocation unless a different time [interval] duration is previously approved by the department;

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

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

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

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

[20.11.61.2 NMAC - Rp, 20.11.61.2 NMAC, 1/23/06; A, 8/30/10]

20.11.61.7 DEFINITIONS: In addition to the definitions in 20.11.61

NMAC, the definitions in 20.11.1 NMAC, *General Provisions*, shall apply unless there is a conflict between definitions, in which case the definition in 20.11.61 NMAC shall govern.

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

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

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

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

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

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

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

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

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

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

E. “Air quality related

values (AQRV)” means visibility and other scenic, cultural, physical, biological, ecological, or recreational resources which may be affected by a change in air quality resulting from the emissions of a proposed major stationary source or major modification that interferes with the management, protection, preservation, or enjoyment of the air quality related values of a federal class I area.

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

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

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

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

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

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

I. “Baseline actual emissions” means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with ~~[the following]~~ Paragraphs (1)-(4) of Subsection I of 20.11.61.7 NMAC.

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

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

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

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

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

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

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

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

(c) The average rate shall

be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

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

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

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

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

J. "Baseline area"

(1) Means ~~[all lands]~~ any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1) (D) or (E) of the act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than one microgram per cubic meter (1 µg/m³) (annual average) of the pollutant for which the minor source baseline date is established. ~~[The major source or major modification establishes the minor source baseline date. Lands are designated as attainment or~~

~~unclassifiable under Section 107(d)(1)(D) or (E) of the Act within each federal air quality control region in the state of New Mexico.]~~

(2) Area redesignations under Section 107(d)(1) (D) or (E) of the act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) establishes a minor source baseline date; or

(b) is subject to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166, and would be constructed in the same state as the state proposing the redesignation;

(3) Any baseline area established originally for total suspended particulates (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, [A TSP]-except that such baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date in accordance with Paragraph (3) of Subsection LL of 20.11.61.7 NMAC.

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

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

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

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

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

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

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

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

initiation of the change.

M. “Best available control technology (BACT)” means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification, which the director ~~[determines is achievable]~~ on a case-by-case basis, ~~[This determination will take]~~ taking into account energy, environmental, and economic impacts and other costs, [The determination must be] determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such ~~[pollutants]~~ pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

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

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

P. “Commence” ~~[means:]~~ as applied to construction of a major stationary source or major modification, means that the owner or operator has all

necessary preconstruction approvals or permits and either has:

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

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

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

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

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

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

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

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

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

X. “Electric utility steam generating unit” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to

any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

Y. “Emissions unit” means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric utility steam generating unit as defined in 20.11.61.7 NMAC. For purposes of ~~[Subsection Y of 20.11.61.7 NMAC]~~ 20.11.61 NMAC, there are two types of emissions units as ~~[described:]~~ follows:

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

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

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

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

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

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

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

(4) under regulations approved pursuant to 40 CFR Part 51, Subpart I, including ~~[40 CFR 51.165 and 40 CFR 51.166]~~ operating permits issued under an EPA-approved program that expressly requires adherence to any permit issued under such program.

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

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

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

EE. “Innovative control technology” means any system of air

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

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

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

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

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

HH. "Major modification"

(1) Means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase of a regulated new source review pollutant; and a significant net emissions increase of that pollutant from the major stationary source.

(2) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

~~[(+)](3)~~ A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

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

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

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

(e) use of an alternative fuel or raw

material by a stationary source which:

~~(i)~~ the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to ~~[40 CFR 51.165]~~ 40 CFR Subpart I or 40 CFR 51.166; or

~~(ii)~~ the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

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

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

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

~~(i)~~ the state implementation plan for the state in which the project is located; and

~~(ii)~~ other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

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

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

~~[(2)](4)~~ This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.11.61.20 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.11.61.20 NMAC shall apply.

II. "Major source baseline date" means:

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

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

JJ. "Major stationary source"

(1) means:

~~[(+)](a)~~ any stationary source listed in Table 1 of 20.11.61.26 NMAC which emits, or has the potential to emit,

~~[emissions equal to or greater than]~~ 100 tons per year ~~or more of any regulated new source review pollutant; [or]~~

~~[(2)](b)~~ notwithstanding the stationary source categories specified in Subparagraph (a) of Paragraph (1) of Subsection JJ of 20.11.61.7 NMAC, any stationary source [not listed in Table 1 of 20.11.61.26 NMAC and] which emits, or has the potential to emit, 250 tons per year or more of any regulated new source review pollutant; or

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

~~[(4)](2)~~ A major source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

~~[(5)](3)~~ The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 of 20.11.61.26 NMAC or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

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

LL. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or major modification subject to 40 CFR 52.21, or 20.11.61 NMAC, submits a complete application.

(1) The trigger dates are:

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

(b) February 8, 1988 for nitrogen dioxide.

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

(a) the area in which the proposed major stationary source or major modification would construct is designated as attainment or unclassifiable under ~~[section 107(d)(1)(D) or (E)]~~ Section 107(d)(1)(D) or (E) of the federal act for the pollutant on the date [the application is determined to be complete, consistent with] of its complete application under 40 CFR 52.21 or 20.11.61 NMAC; and

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

(3) Any minor source baseline date established originally for the TSP

[~~increment~~] increments shall remain in effect and shall apply for purposes of determining the amount of available PM₁₀ increments, except that the department may rescind any [FSP] such minor source baseline date [if] where it can be shown, to the director's satisfaction that, either the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering [the ~~minor source baseline~~] that date did not result in a significant amount of PM₁₀ emissions.

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

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

OO. "Net emissions increase"

____ (1) Means, that with respect to any regulated new source review pollutant emitted by a major stationary source, [the following:

____ (1-)] the amount by which the sum of the following exceeds zero:

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

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection I of 20.11.61.7 NMAC, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection I of 20.11.61.7 NMAC shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs [~~within the time period~~] between:

____ (a) the date five years prior to the commencement of construction on the particular change; and

____ (b) the date that the increase from the particular change occurs.

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

(a) it occurs [~~within the time period~~] between:

____ (i) the date five years prior to the commencement of construction on the particular change; and

____ (ii) the date that the increase from the particular change occurs; and

(b) the department has not relied

on it in issuing a permit for the source under regulations approved pursuant to 20.11.61 NMAC, [~~and~~] which permit is in effect when the increase in actual emissions from the particular change occurs.

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

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

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

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

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

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

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

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

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

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

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

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

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

UU. "Projected actual emissions"

____ (1) Means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated new source review pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

____ (2) In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

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

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

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

[~~(4)~~](3) may elect to use the emissions unit's potential to emit in tons per year in lieu of using the method set out in [Paragraphs (1) through (3) of Subsection UU of 20.11.61.7 NMAC may elect to use the emissions unit's potential to emit in tons per year] Subparagraphs (a)-(c) of Paragraph

(2) of Subsection UU of 20.11.61.7 NMAC.

VV. “Regulated new source review pollutant” means the following:

(1) any pollutant for which a national ambient air quality standard has been promulgated and any [constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds and oxides of nitrogen are precursors for ozone)] pollutant identified under Paragraph (1) of Subsection VV of 20.11.61 NMAC as a constituent or precursor to such pollutant; precursors identified by the administrator for purposes of new source review are the following:

(a) volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas;

(c) nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

(d) volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations;

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

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

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

(5) [Reserved];

(6) particulate matter (PM) emissions, $PM_{2.5}$ emissions, and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate

matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM , $PM_{2.5}$ and PM_{10} in PSD permits; compliance with emissions limitations for PM , $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of 20.11.61 NMAC unless the applicable implementation plan required condensable particulate matter to be included.

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

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

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

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

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

XX. “Secondary emissions” means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of [Subsection XX of 20.11.61.7 NMAC] 20.11.61 NMAC, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

YY. “Significant” means:

(1) in reference to a net emissions increase or the potential of a source to emit [air pollutants] any of the pollutants listed

in Table 2 of 20.11.61.27 NMAC, a rate of [emission] emissions that would equal or exceed any of the corresponding emission rates listed in Table 2 of 20.11.61.27 NMAC;

(2) in reference to a net emissions increase or the potential of a source to emit a regulated new source review pollutant that Paragraph (1) of Subsection YY of 20.11.61.7 NMAC, does not list, any emissions rate; and

(3) notwithstanding Paragraph (1) of Subsection YY of 20.11.61.7 NMAC, any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than $1 \mu\text{g}/\text{m}^3$ (24-hour average).

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

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

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

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

DDD. “Volatile organic compound (VOC)” means any [organic] compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions; [that is, any;] this includes any such organic compound other than those which the administrator designates as having negligible photochemical reactivity under 40 CFR 51.100(s).

[20.11.61.7 NMAC - Rp, 20.11.61.7 NMAC, 1/23/06; A, 5/15/06; A, 8/30/10]

20.11.61.11 APPLICABILITY:

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

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

C. No new major stationary source or major modification to which the

requirements of Subsections A, B, C and D of 20.11.61.12 NMAC, Sections 20.11.61.13 NMAC through 20.11.61.18 NMAC, 20.11.61.21 NMAC and 20.11.61.24 NMAC apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

D. Applicability procedures.

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

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

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

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

(5) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated new source review pollutant is

projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of Subsection D of 20.11.61.11 NMAC as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

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

[20.11.61.11 NMAC - N, 1/23/06; A, 8/30/10]

20.11.61.12 OBLIGATIONS OF OWNERS OR OPERATORS OF SOURCES:

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

B. ~~[The issuance of a permit does]~~ Approval to construct shall not relieve any person from the responsibility [of complying] to comply fully with the provisions of the Air Quality Control Act, Sections 74-2-1 to 74-2-17, NMSA 1978; any applicable regulations of the board; and any other requirements under local, state, or federal law.

C. Approval to construct shall become invalid if

[(1)] construction is not commenced within 18 months after receipt of such approval,

[(2)] if construction is discontinued for a period of 18 months or more, or

[(3)] if construction is not completed within a reasonable time; ~~[For a phased construction project, each phase must commence construction within 18 months of the projected and approved commencement date:]~~ the [director] administrator may extend the 18-month period upon a satisfactory showing that an extension is justified; this provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

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

source or modification.

E. Except as otherwise provided in Subparagraph (b) of Paragraph (6) of Subsection E of 20.11.61.12 NMAC the following specific provisions apply [to] with respect to any regulated new source review pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility within the meaning of Paragraph (6) of Subsection E of 20.11.61.12 NMAC that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection UU of 20.11.61.7 NMAC for calculating projected actual emissions.

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

(a) a description of the project;

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

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

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of Subsection E of 20.11.61.12 NMAC to the department. Nothing in [this] Paragraph (2) of Subsection E of 20.11.61.12 NMAC shall be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction; however, necessary preconstruction approvals and/or permits must be obtained before beginning actual construction.

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

potential to emit of that regulated new source review pollutant at such emissions unit. For purposes of Paragraph (3) of Subsection E of 20.11.61.12 NMAC, fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in Table 1 of 20.11.61.26 NMAC or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

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

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

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

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

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

(6) A "reasonable possibility" under Subsection E of 20.11.61.12 NMAC occurs when the owner or operator calculates the project to result in either:

(a) a projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection ZZ of 20.11.61.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated new source review pollutant; or

(b) a projected actual emissions increase that, added to the amount of emissions excluded under Paragraph (3) of Subsection UU of 20.11.61.7 NMAC, sums

to at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection ZZ of 20.11.61.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated new source review pollutant; for a project for which a reasonable possibility occurs only within the meaning of Subparagraph (b) of Paragraph (6) of Subsection E of 20.11.61.12 NMAC, and not also within the meaning of Subparagraph (a) of Paragraph (6) of Subsection E of 20.11.61.12 NMAC, then provisions of Paragraphs (2) through (5) of Subsection E of 20.11.61.12 NMAC do not apply to the project.

F. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection E of 20.11.61.12 NMAC available for review upon request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii). [20.11.61.12 NMAC - Rp, 20.11.61.12 NMAC, 1/23/06; A, 8/30/10]

20.11.61.14 C O N T R O L TECHNOLOGY [REQUIREMENTS] REVIEW AND INNOVATIVE CONTROL TECHNOLOGY:

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

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

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

D. **Innovative control technology.** The department may approve a system of innovative control technology for the major stationary source or major

modification if:

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

(2) the owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under ~~[best available control technology]~~ Subsection A of 20.11.61.14 NMAC by a date specified by the department. Such date shall not be later than four years from the time of startup or seven years from permit issuance; and

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

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

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

(b) impact any federal class I area; nor

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

~~[(d)]~~(5) all other applicable requirements including those for public participation have been met.

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

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

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

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

F. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with Subsection E of 20.11.61.14 NMAC, the department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology ~~[This shall be accomplished]~~ through use of a demonstrated system of control.

G. If the owner or operator of a major stationary source or major modification previously issued a permit under 20.11.61 NMAC applies for an extension, and the new proposed date of

construction is greater than 18 months from the date the permit would become invalid, the determination of best available control technology shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

~~[H. For cases where PM_{10} emissions cannot be quantified, the best available control technology limitation may be defined in terms of particulate matter emissions:]~~

[20.11.61.14 NMAC - Rp, 20.11.61.14 NMAC, 1/23/06; A, 8/30/10]

20.11.61.15 AMBIENT IMPACT REQUIREMENTS:

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

B. Source impact analysis. The owner or operator of the proposed source or modification shall demonstrate that the allowable emission increases from the proposed source or modification, ~~[including secondary emissions]~~, in conjunction with all other applicable emissions increases or reductions, (including secondary emissions), ~~[shall]~~ would not cause or contribute to air pollution in violation of:

(1) any national ambient air quality standard in any ~~[location]~~ air quality control region; or

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

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

[20.11.61.15 NMAC - Rp, 20.11.61.15 NMAC, 1/23/06; A, 8/30/10]

20.11.61.16 ADDITIONAL IMPACT [REQUIREMENTS] ANALYSES:

A. The owner or operator of the proposed major stationary source or major modification shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general

commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value. The analysis can use data or information available from the department.

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

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

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

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

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

[20.11.61.16 NMAC - Rp, 20.11.61.16 NMAC, 1/23/06; A, 8/30/10]

20.11.61.17 AMBIENT AIR QUALITY MODELING:

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

[20.11.61.17 NMAC - Rp, 20.11.61.17 NMAC, 1/23/06; A, 8/30/10]

20.11.61.18 MONITORING

REQUIREMENTS-AIR QUALITY ANALYSIS:

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

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

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

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

C. [Continuous air quality monitoring data shall be required for all pollutants for which a national ambient air quality standard exists.] For pollutants (other than nonmethane hydrocarbons) for which a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase. Such data shall be submitted to the department for at least the one year period prior to receipt of the permit application. The department has the discretion to:

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

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

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

The owner or operator of a proposed major

stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51 Appendix S, Section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under 20.11.61.18 NMAC.

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

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

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

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

F. Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct [post construction] such ambient monitoring as the department determines is necessary [to validate attainment of ambient air quality standards and to assure that increments are not exceeded.] to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area, including monitoring to validate attainment of ambient air quality standards and to assure that increments are not exceeded.

G. Operation of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR 58, Appendix B during the operation of monitoring stations for purposes of satisfying the requirements of ~~[this 20.11.61 NMAC]~~ 20.11.61.18 NMAC.

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

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

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

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

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

[20.11.61.18 NMAC - Rp, 20.11.61.18 NMAC, 1/23/06; A, 8/30/10]

20.11.61.19 T E M P O R A R Y SOURCE EXEMPTIONS:

The requirements of Subsection B of 20.11.61.15 NMAC, 20.11.61.16 NMAC and 20.11.61.18 NMAC shall not apply to a [temporary] major source or modification [subject to 20.11.61 NMAC for a given] with respect to a particular pollutant, if the allowable emissions of [such] that pollutant from the source, or the net emissions increase of that pollutant from the modification, would not impact any federal class I area or any areas where an applicable increment is known to be violated; and would be temporary.

[20.11.61.19 NMAC - Rp, 20.11.61.19 NMAC, 1/23/06; A, 8/30/10]

20.11.61.20 A C T U A L S PLANTWIDE APPLICABILITY LIMITS (PALs)

A. Applicability.

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

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

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

(b) does not have to be approved through the ~~[requirements of 20.11.61 NMAC]~~ plan's major NSR program; and

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

(3) Except as provided under Subparagraph (c) of Paragraph ~~(+)~~(2) of Subsection A of 20.11.61.20 NMAC, a major stationary source shall continue to comply with all applicable federal or state

requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions applicable to 20.11.61.20 NMAC.

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

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

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

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

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

(4) Major emissions unit means:

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

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

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

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

(7) **PAL effective period** means the period beginning with the PAL effective

date and ending 10 years later.

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

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

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

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

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

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

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

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

D. General requirements for establishing PALs.

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

(a) The PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter for the entire major stationary source. For each

month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

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

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

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

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

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

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

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

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

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of Subsection F of 20.11.61.20 NMAC, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an

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

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

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

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

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

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

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

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

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual

emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection C of 20.11.61.20 NMAC.

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

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

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

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

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

(1) **PAL effective period.** The PAL effective period shall be [ten] 10 years.

(2) Reopening of the PAL permit.

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

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

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

I. Expiration of a PAL.

Any PAL that is not renewed in accordance with the procedures in Subsection J of 20.11.61.20 NMAC shall expire at the

end of the PAL effective period, and the requirements in Subsection I of 20.11.61.20 NMAC shall apply.

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

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

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

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

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

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

(5) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations

that had been established pursuant to Subsection D of 20.11.61.12 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (2) of Subsection A of 20.11.61.20 NMAC.

J. Renewal of a PAL.

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

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

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

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

(b) A proposed PAL level.

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

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

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

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

(b) the department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be

appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(c) Notwithstanding Subparagraphs (a) and (b) of Paragraph (4) of Subsection J of 20.11.61.20 NMAC: if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Subsection K of 20.11.61.20 NMAC.

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

K. Increasing a PAL during the PAL effective period.

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

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

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

(c) The owner or operator obtains a major new source review permit for all emissions unit(s) identified in Subparagraph

(a) of Paragraph (1) of Subsection B of 20.11.61.20 NMAC, regardless of the magnitude of the emissions increase resulting from them, that is, no significant levels apply. These emissions unit(s) shall comply with any emissions requirements resulting from the major new source review process, for example, BACT, even though they have also become subject to the PAL or continue to be subject to the PAL.

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

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of Subsection K of 20.11.61.20 NMAC), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of 20.11.61.20 NMAC.

L. Monitoring requirements for PALs.

(1) General requirements.

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

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Paragraph (2) of Subsection L of 20.11.61.20 NMAC and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of Paragraph (1) of Subsection L of 20.11.61.20 NMAC, you may also employ an alternative monitoring approach that meets Subparagraph (a) of Paragraph (1) of Subsection L of 20.11.61.20 NMAC if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of 20.11.61.20 NMAC renders the PAL invalid.

(2) **Minimum performance requirements for approved monitoring approaches.** The following are acceptable general monitoring approaches when

conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of Subsection L of 20.11.61.20 NMAC:

- (a) mass balance calculations for activities using coatings or solvents;
- (b) CEMS;
- (c) CPMS or PEMS; and
- (d) emission factors.

(3) Mass balance calculations.

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

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

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

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

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

(a) CEMS must comply with applicable performance specifications found in 40 CFR part 60, Appendix B; and

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

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

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

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

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

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

factors' development;

(b) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

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

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

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of Subsection L of 20.11.61.20 NMAC, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

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

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

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

M. Recordkeeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of 20.11.61.20 NMAC and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

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

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

(b) each annual certification of compliance pursuant to 20.11.42 NMAC, Operating Permits, and the data relied on in

certifying the compliance.

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with 20.11.42 NMAC, *Operating Permits*. The reports shall meet the following requirements.

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

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

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of 20.11.61.20 NMAC.

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

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

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

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of 20.11.61.20 NMAC.

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

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

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

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

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

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

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

O. Transition requirements.

(1) The department may not issue a PAL that does not comply with the requirements of Subsections A through O of 20.11.61.20 NMAC after the administrator has approved regulations incorporating these requirements into the SIP.

(2) The department may supersede any PAL which was established prior to the date of approval of the SIP by the administrator with a PAL that complies with the requirements of 20.11.61.20 NMAC.

[20.11.61.20 NMAC - N, 1/23/06; A, 8/30/10]

20.11.61.21 PUBLIC PARTICIPATION AND NOTIFICATION:

A. The department shall, within 30 days after receipt of an application, review such application and determine whether it is administratively complete or there is any deficiency in the application or information submitted. To be deemed administratively complete, the application must meet the requirements of 20.11.61.13 NMAC in addition to the requirements of 20.11.41 NMAC. If the application is deemed:

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

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

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

B. For purposes of determining minor source baseline date pursuant to 40 CFR 51:

(1) an application is complete when it contains all the information

necessary for processing the application; designating an application complete for purposes of 40 CFR 51 does not preclude the department from requesting or accepting any additional information; and

(2) in the event that additional information is submitted to remedy any deficiency in the application or information submitted, the date of receipt of the application shall be the date on which the department received all required information.

C. Within one year after receipt of a complete application, the department shall:

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

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

(3) Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed:

- (a) of the application;
- (b) the preliminary determination;
- (c) the degree of increment consumption that is expected from the source or modification; and
- (d) of the opportunity for comment at a public hearing as well as written public comment; the public comment period shall be for 30 days from the date of such advertisement.

(4) Send a copy of the notice of public comment to:

- (a) the applicant;
- (b) the administrator; and
- (c) officials and agencies having jurisdiction over the location where the proposed construction would occur as follows: ~~[to include]~~ any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of

the application. The department shall make all comments available for public inspection in the same locations where the department made available preconstruction information relating to the proposed source or modification.

(7) Within 180 days after an application is deemed administratively complete, unless the director grants an extension not to exceed 90 days for good cause:

(a) make a final determination of whether construction should be approved, approved with conditions, or disapproved; and

(b) notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the department made available preconstruction information and public comments relating to the source. [20.11.61.21 NMAC - N, 1/23/06; A, 8/30/10]

20.11.61.23 EXCLUSIONS FROM INCREMENT CONSUMPTION:

A. Following a public hearing, the director may exclude the following concentrations in determining compliance with a maximum allowable increase:

~~[A-]~~ (1) concentrations ~~[due]~~ attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), over the emissions from such sources before the effective date of such an order; [under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation). Sources must have converted from the use of petroleum products, natural gas, or both by reason of such order. This exclusion shall not apply more than five years after the effective date of such an order; or]

~~[B-]~~ (2) concentrations ~~[due]~~ attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act, over the emissions from such sources before the effective date of [a] such plan; [in effect pursuant to the federal Power Act. Sources must have converted from using natural gas by reason of a natural gas curtailment plan. This exclusion shall not apply more than five years after the effective date of such a plan; or]

~~[C-]~~ (3) concentrations of particulate matter ~~[due]~~ attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; ~~[or]~~

~~[D-]~~ (4) the increase in concentrations ~~[due]~~ attributable to new sources outside the United States over the concentrations ~~[attributed]~~ attributable to existing sources which are included in the baseline ~~[concentrations]~~ concentration; and

(5) concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the administrator as meeting the criteria specified in Subsection D of 20.11.61.23 NMAC.

B. If the plan provides that the concentrations to which Paragraph (1) or (2) of Subsection A of 20.11.61.23 NMAC refers, shall be excluded, it shall also provide that no exclusion of such concentrations shall apply more than five years after the effective date of the order to which Paragraph (1) of Subsection A of 20.11.61.23 NMAC refers, or the plan to which Paragraph (2) of Subsection A of 20.11.61.23 NMAC refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

C. ~~[Reserved]~~

D. For purposes of excluding concentrations pursuant to Paragraph (5) of Subsection A of 20.11.61.23 NMAC, the administrator may approve a plan revision that:

(1) specifies the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur such time is not to exceed 2 years in duration unless a longer time is approved by the administrator.

(2) specifies that the time period for excluding certain contributions in accordance with Paragraph (1) of Subsection D of 20.11.61.23 NMAC, is not renewable;

(3) allows no emissions increase from a stationary source which would:

(a) impact a class I area or an area where an applicable increment is known to be violated; or

(b) cause or contribute to the violation of a national ambient air quality standard;

(4) requires limitations to be in effect the end of the time period specified in accordance with Paragraph (1) of Subsection D of 20.11.61.23 NMAC, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

[20.11.61.23 NMAC - Rp, 20.11.61.21 NMAC, 1/23/06; A, 8/30/10]

20.11.61.24 [ADDITIONAL REQUIREMENTS FOR] SOURCES IMPACTING FEDERAL CLASS

I AREAS - ADDITIONAL REQUIREMENTS:

A. Notice to EPA. The department shall transmit to the administrator and the federal land manager a copy of each permit application relating to a major stationary source or major modification proposing to locate within 100 kilometers of any federal class I area. The complete permit application shall be transmitted within 30 days of receipt and 60 days prior to any public hearing on the application. The department shall include all relevant information in the permit application. Relevant information shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The department shall consult with all affected federal land managers as to the completeness of the permit application and shall consider any analysis performed by the federal land manager concerning the impact of the proposed major stationary source or major modification on air quality related values (AQRV). This consideration shall include visibility, if such analysis is received within 30 days after the federal land manager receives a copy of the complete application. Additionally, the department shall notify any affected federal land manager within 30 days from the date the department receives a request for a pre-application meeting from a proposed source subject to 20.11.61 NMAC. Notice shall be provided to the administrator and federal land manager of every action related to the consideration of such permit. The department shall also provide the federal land manager and the administrator with a copy of the preliminary determination required under 20.11.61.21 NMAC and shall make available to them any materials used in making that determination. In any case where the department disagrees with the federal land manager's analysis of source impact on air quality related values, the department shall, either explain its decision or give notice to the federal land manager as to where the explanation can be obtained. In the case where the department disagrees with the federal land managers' analysis, the department will also explain its decision or give notice to the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed, as to where the decision can be obtained.

B. The department shall transmit to air quality control agencies of neighboring states and Indian governing bodies a copy of each permit application having the potential to affect federal class I areas or increment consumption in areas under their jurisdiction. The department shall also provide the affected air quality control agencies and Indian governing bodies with a copy of the preliminary determination required under 20.11.61.21

NMAC and shall make available to them any materials used in making that determination. The department shall include a provision for a 60 day comment period for the federal land managers before any public hearing on a permit application is held.

C. Federal land managers may demonstrate to the department that emissions from a proposed source or modification would have an adverse impact on air quality related values, including visibility, of any federal class I lands under their jurisdiction. This may be done even though the change in air quality resulting from emissions from the proposed source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a federal class I area. If the department concurs with this demonstration, then the source shall not be issued a permit.

D. Class I waivers: The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from a proposed source or modification would have no adverse impact on air quality related values, including visibility, of federal class I area under his or her jurisdiction. This may be done even though the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a federal class I area. If the federal land manager concurs with such demonstration and so certifies to the department, the department may grant a waiver from such maximum allowable increases. Emission limitations must be included in the permit as necessary to assure that emissions of sulfur dioxide, particulate matter, and oxides of nitrogen would not exceed the maximum allowable increases over minor source baseline concentrations shown in Table 5 of 20.11.61.30 NMAC.

E. For the case where the federal land manager does not perform an impact analysis with respect to visibility impairment in a federal class I area, the department may perform such an analysis. The department shall not issue the source a permit if the department determines that an adverse impact on visibility would occur. The adverse impact must be due, primarily, to the operation of the proposed source or modification.

F. Sulfur dioxide waiver by governor with FLM concurrence: The owner or operator of a proposed major stationary source or major modification, which cannot be approved under Subsection D of 20.11.61.23 NMAC, may demonstrate to the governor that the source cannot be constructed by reason of an exceedance of a maximum allowable increase for a federal class I area for sulfur dioxide for a period

of 24 hours or less. The owner or operator may also demonstrate that a waiver from this requirement would not adversely affect the air quality related values of the federal class I area. The governor, after consideration of the federal land manager's recommendation and subject to his concurrence, may, after notice and public hearing, grant a waiver from such maximum allowable increase. If the waiver is granted, the department shall issue a permit to the owner or operator of the source or modification. Any owner or operator of a source or modification who obtains a permit under 20.11.61 NMAC shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases of ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of 20.11.61.31 NMAC for periods of 24 hours or less for more than 18 days, not necessarily consecutive, in any annual period.

G. Sulfur dioxide waiver by governor with the president's concurrence. In any case where the governor recommends a waiver in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president through the office of the governor. If the president so directs, the department shall issue the permit. Any source or modification that obtains a permit under 20.11.61 NMAC shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases in ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of 20.11.61.31 NMAC for periods of 24 hours or less for more than 18 days, not necessarily consecutive, in any annual period.

[20.11.61.24 NMAC - Rp, 20.11.61.22 NMAC, 1/23/06; A, 8/30/10]

20.11.61.25 RESTRICTIONS ON AREA CLASSIFICATIONS:

A. Mandatory federal class I areas:

(1) All of the following areas which were in existence on August 7, 1977, [and classified as mandatory federal] shall be class I areas and may not be redesignated:

- (a) international parks (all of them);
- (b) national wilderness areas which exceed 5,000 acres in size;
- (c) national memorial parks which exceed 5,000 acres in size; and
- (d) national parks which exceed 6,000 acres in size.

(2) **Specifically for New Mexico, these areas are:**

- (a) Bandelier wilderness, administered by national park service (NPS);
- (b) Bosque del Apache wilderness,

administered by national fish and wildlife service (NFWS);

- (c) Carlsbad caverns national park, administered by NPS;
- (d) Gila wilderness, administered by national forest service (NFS);
- (e) Pecos wilderness, administered by NFS;
- (f) Salt Creek wilderness, administered by NFWS;
- (g) San Pedro Parks wilderness, administered by NFS;
- (h) Wheeler Peak wilderness, administered by NFS; and
- (i) White Mountain wilderness, administered by NFS.

B. Areas which may be redesignated only as class I or class II:

(1) The following areas may be redesignated only as class I or II:

(a) an area which, as of August 7, 1977, [~~which exceeds~~] exceeded 10,000 acres in size and [~~is~~] was a national monument, national primitive area, national preserve, national recreational area, national wild and scenic river, national wildlife refuge; [~~or~~] and

(b) a national park or national wilderness area established after August 7, 1977 which exceeds 10,000 acres in size.

(2) Specifically for New Mexico, these areas include (but are not necessarily limited to):

- (a) Apache Kid wilderness, administered by national forest service (NFS);
- (b) Bandelier national monument, administered by national park service (NPS);
- (c) Bitter Lake national wildlife refuge, administered by national fish and wildlife service (NFWS);
- (d) Blue Range wilderness, administered by NFS;
- (e) Bosque del Apache national wildlife refuge, administered by NFWS;
- (f) Capitan mountains wilderness, administered by NFS;
- (g) Cebolla wilderness, administered by bureau of land management (BLM);
- (h) Chama River Canyon wilderness, administered by NFS;
- (i) Cruces Basin wilderness, administered by NFS;
- (j) De-na-zin wilderness, administered by BLM;
- (k) El Malpais national monument, administered by NPS;
- (l) Latir Peak wilderness, administered by NFS;
- (m) Manzano mountain wilderness, administered by NFS;
- (n) San Andres national wildlife refuge, administered by NFWS;
- (o) Sandia Mountain wilderness, administered by NFS;
- (p) Sevilleta national wildlife refuge, administered by NFWS;
- (q) West Malpais wilderness, administered by BLM;
- (r) White Sands national monument, administered by NPS; and
- (s) Withington Wilderness, administered by NFS.

[20.11.61.25 NMAC - Rp, 20.11.61.20 NMAC, 1/23/06; A, 8/30/10]

20.11.61.26 TABLE 1 - PSD SOURCE CATEGORIES:

- A.** Carbon black plants (furnace process).
- B.** Charcoal production plants.
- C.** Chemical process plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS Codes 325193 or 312140).
- D.** Coal cleaning plants (with thermal dryers).
- E.** Coke oven batteries.
- F.** Fossil fuel boilers (or combinations thereof) totaling more than 250 million BTU/hr heat input.
- G.** Fossil fuel-fired steam electric plants of more than 250 million BTU/hr heat input.
- H.** Fuel conversion plants.
- I.** Glass fiber processing plants.
- J.** Hydrofluoric acid plants.
- K.** Iron and steel mills.
- L.** Kraft pulp mills.
- M.** Lime plants.
- N.** Municipal incinerators capable of charging more than [~~50~~] 250 tons of refuse per day.
- O.** Nitric acid plants.
- P.** Petroleum refineries.
- Q.** Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.
- R.** Phosphate rock processing plants.
- S.** Portland cement plants.
- T.** Primary aluminum ore reduction plants.
- U.** Primary copper smelters.
- V.** Primary lead smelters.
- W.** Primary zinc smelters.
- X.** Secondary metal production plants.
- Y.** Sintering plants.
- Z.** Sulfur recovery plants.
- AA.** Sulfuric acid plants.
- BB.** Taconite ore processing plants.

[20.11.61.26 NMAC - Rp, 20.11.61.23 NMAC, 1/23/06; A, 8/30/10]

20.11.61.27 TABLE 2 - SIGNIFICANT EMISSION RATES:

POLLUTANT		EMISSION RATE (TONS/YR)
Carbon monoxide		100
Fluorides		3
Lead		0.6
Municipal waste combustor:		
	Acid gases (measured as sulfur dioxide and hydrogen chloride)	40 (36 megagrams/year)
	Metals (measured as particulate matter)	15 (14 megagrams/year)
	Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 (0.0000032 megagrams/yr)
Municipal solid waste landfill emissions (measured as NMOC)		50 (45 megagrams/year)
Nitrogen oxides		40
Ozone [(as VOC, Volatile Organic Compounds)]		40 VOC or NO _x
Particulate Matter:		
	Particulate matter emissions	25
	PM ₁₀ emissions	15
	PM _{2.5} emissions	10 tpy of direct PM _{2.5} emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM _{2.5} precursor under Subsection VV of 20.11.61.7 NMAC
Sulfur compounds		
	Hydrogen sulfide (H ₂ S)	10
	Reduced sulfur compounds (incl. H ₂ S)	10
	Sulfur dioxide	40
	Sulfuric acid mist	7
	Total reduced sulfur (incl. H ₂ S)	10
Any other [pollutant] regulated [under the Act] new source review pollutant that is not listed in this table		Any emission rate
Each regulated pollutant		Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24-hr average) in any Class I Federal area located within 10 km of the source.

[20.11.61.27 NMAC - Rp, 20.11.61.24 NMAC, 1/23/06; A, 8/30/10]

20.11.61.28 TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS:

POLLUTANT	AIR QUALITY CONCENTRATION micrograms per cubic meter (ug/m ³)	AVERAGING TIME
Carbon monoxide	575	8 hours
Fluorides	0.25	24 hours
Lead	0.1	3 months
Nitrogen dioxide	14	Annual
Ozone	b	
Particulate matter (PM ₁₀)	10	24 hours
Sulfur compounds		
	Hydrogen sulfide (H ₂ S)	0.20
	Reduced sulfur compounds (incl. H ₂ S)	10
	Sulfur dioxide	13
	Sulfuric acid mist	a
	Total reduced sulfur (incl. H ₂ S)	10

a - No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.

b - No de minimis air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.

[20.11.61.28 NMAC - Rp, 20.11.61.25 NMAC, 1/23/06; A, 5/15/06; A, 8/30/10]

20.11.61.29 TABLE 4 - ALLOWABLE PSD INCREMENTS:

<u>Pollutant</u>	<u>Maximum allowable increase</u> (micrograms per cubic meter) ($\mu\text{g}/\text{m}^3$)		
	Class I	Class II	Class III
Nitrogen Dioxide annual arithmetic mean	2.5	25	50
Particulate Matter PM ₁₀ , annual arithmetic mean	4	17	34
PM ₁₀ , 24-hour maximum	8 ^a	30 ^a	60 ^a
Sulfur Dioxide annual arithmetic mean	2	20	40
24-hour maximum	5 ^a	91 ^a	182 ^a
3-hour maximum	25 ^a	512 ^a	700 ^a
a - Not to be exceeded more than once a year.			

[20.11.61.29 NMAC - Rp, 20.11.61.26 NMAC, 1/23/06; A, 5/15/06; A, 8/30/10]

20.11.61.30 TABLE 5 - MAXIMUM ALLOWABLE INCREASES FOR CLASS I [~~WAIVERS~~]VARIANCES:

<u>Pollutant</u>	<u>Maximum allowable increase</u> Micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)
Nitrogen Dioxide annual arithmetic mean	25
Particulate Matter PM ₁₀ , annual arithmetic mean	17
PM ₁₀ , 24-hour maximum	30
Sulfur Dioxide annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

[20.11.61.30 NMAC - N, 1/23/06; A, 8/30/10]

20.11.61.31 TABLE 6 - MAXIMUM ALLOWABLE INCREASE FOR SULFUR DIOXIDE WAIVER BY GOVERNOR:

	[Micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)]	
Period of Exposure	Terrain Areas	
	Low	High
24-hr. maximum	36 $\mu\text{g}/\text{m}^3$	62 $\mu\text{g}/\text{m}^3$
3-hr. maximum	130 $\mu\text{g}/\text{m}^3$	221 $\mu\text{g}/\text{m}^3$

[20.11.61.31 NMAC - N, 1/23/06; A, 8/30/10]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 5 UPLAND GAME**

19.31.5.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.31.5.1 NMAC - Rp, 19.31.5.1 NMAC,
8-16-2010]

19.31.5.2 SCOPE: Hunters of
upland game. Additional requirements may
be found in Chapter 17 NMSA 1978 and
Chapters 30 and 32 through 36 of Title 19.
[19.31.5.2 NMAC - Rp, 19.31.5.2 NMAC,
8-16-2010]

**19.31.5.3 S T A T U T O R Y
AUTHORITY:** 17-1-14 and 17-1-26
NMSA 1978 provide that the New Mexico
game commission has the authority to
establish rules and regulations that it may
deem necessary to carry out the purpose of
Chapter 17 NMSA 1978 and all other acts
pertaining to protected mammals, birds, and
fish.
[19.31.5.3 NMAC - Rp, 19.31.5.3 NMAC,
8-16-2010]

19.31.5.4 DURATION: August
16, 2010 through March 31, 2014.
[19.31.5.4 NMAC - Rp, 19.31.5.4 NMAC,
8-16-2010]

19.31.5.5 EFFECTIVE DATE:
August 16, 2010 unless a later date is cited at
the end of individual sections.
[19.31.5.5 NMAC - Rp, 19.31.5.5 NMAC,
8-16-2010]

19.31.5.6 O B J E C T I V E :
Establishing seasons on blue grouse,
pheasant, Gambel's quail, Montezuma quail,
northern bobwhite, scaled quail, Abert's
squirrel, red squirrel, Arizona gray squirrel,
fox squirrel, eastern gray squirrel, and
setting falconry seasons.
[19.31.5.6 NMAC - Rp, 19.31.5.6 NMAC,
8-16-2010]

19.31.5.7 DEFINITIONS:

A. "Aggregate" shall mean
the sum of individual game taken comprised
of several species as allowed by the bag limit
or possession limit.

B. "Area GS-1" (GS-
1) shall mean the area bounded by the
following: beginning at the New Mexico-
Colorado border at NM 551, south on NM
551 to U.S. 64/87, west on U.S. 64/87 to

I-25, south on I-25 to U.S. 285, south on
U.S. 285 to N.M. 41, south on N.M. 41 to
U.S. 60, west on U.S. 60 to I-25, north on
I-25 to N.M. 550, northwest on N.M. 550
to the southeastern border of the Jicarilla
Apache Indian reservation, north on the
Jicarilla Apache Indian reservation border
to the New Mexico-Colorado border, east to
I-25.

C. "Area GS-2" (GS-
2) shall mean the area bounded by the
following: beginning at the New Mexico-
Arizona border at I-40, east on I-40 to I-25,
south on I-25 to I-10, west on I-10 to N.M.
11, south on N.M. 11 to the New Mexico-
Mexico border, west to the New Mexico-
Arizona border, north to I-40.

D. "Area S-3" (S-3) shall
mean the area bounded by the following:
beginning at the New Mexico-Texas border
at U.S. 54, north on U.S. 54 to U.S. 285,
south on U.S. 285 to the New Mexico-Texas
border, east to U.S. 54.

E. "Area S-4" (S-4) shall
mean the area bounded by the following:
beginning at the New Mexico-Arizona
border at Four-corners south to I-40; east
on I-40 to I-25; north on I-25 to N.M. 550;
northwest on N.M. 550 to the southern
reservation boundary of the Jicarilla Apache
reservation; north and west along the
western reservation boundary to the New
Mexico-Colorado border; west along the
New Mexico-Colorado border to the four-
corners.

F. "Arrows" shall mean
only those arrows or bolts having broadheads
with steel cutting edges.

G. "Bag limit" shall mean
the number of upland game animals a
licensed hunter is allowed per day.

H. "Baiting" shall
mean the placing, exposing, depositing,
distributing, or scattering of any salt, grain,
scent or other feed on or over areas where
hunters are attempting to take upland game
birds or mammals.

I. "Bow" shall mean
compound, recurve, long bow, or crossbow.
Sights on bows shall not project light nor
magnify.

J. "Crossbows" shall
mean a device with a bow limb or band of
flexible material that is attached horizontally
to a stock and has a mechanism to hold
the string in a cocked position. Sights
on crossbows shall not project light nor
magnify.

K. "Department" shall
mean the New Mexico department of game
and fish.

L. "Department offices"
shall mean department offices in Santa
Fe, Albuquerque, Raton, Las Cruces, or
Roswell.

M. "Director" shall mean
the director of the New Mexico department

of game and fish.

N. "Established road" is
defined as follows:

(1) a road, built or maintained
by equipment, which shows no evidence
of ever being closed to vehicular traffic by
such means as berms, ripping, scarification,
reseeding, fencing, gates, barricades or
posted closures;

(2) a two-track road completely
void of vegetation in the tracks which
shows use prior to hunting seasons for other
purposes such as recreation, mining, logging,
and ranching and shows no evidence of
ever being closed to vehicular traffic by
such means as berms, ripping, scarification,
reseeding, fencing, gates, barricades or
posted closures.

O. "Falconry" shall mean
hunting upland game using raptors.

P. "License year" shall
mean the period from April 1 through March
31.

Q. "Modern firearms"
shall mean center-fire firearms, not to
include any fully automatic firearms. Legal
shotguns shall be only those shotguns
capable of being fired from the shoulder.

**R. "Muzzle-loader or
muzzle-loading firearms"** shall mean those
rifles and shotguns in which the charge and
projectile are loaded through the muzzle.
Only blackpowder, Pyrodex® or equivalent
blackpowder substitute may be used. Use
of smokeless powder is prohibited. Legal
muzzle-loader shotguns shall be only those
shotguns capable of being fired from the
shoulder.

S. "Non-toxic shot" shall
mean that non-toxic shot approved for use
by the U. S. fish and wildlife service.

**T. "Permanent mobility
limitation"** shall mean an individual that
permanently has: restricted movement in
both arms, or is restricted to the use of a
walker, wheelchair, or two crutches to walk,
or has a combination of disabilities that
cause comparable substantial functional
limitations.

U. "Possession limit" shall
mean twice the daily bag limit one can have
in their ownership, except where otherwise
defined.

V. "Protected species"
shall mean any of the following animals:

(1) all animals defined as protected
wildlife species and game fish under Section
17-2-3 New Mexico Statutes Annotated
1978 Compilation;

(2) all animals listed as
endangered species or subspecies as stated
in regulation(s) set by the state game
commission.

**W. "Retention" or
"retain"** shall mean the holding of in
captivity.

X. "State game

commission owned properties" shall mean all department owned or managed waterfowl management areas, wildlife management areas, sandhills prairie conservation area and lesser prairie-chicken areas.

Y. "Unlimited" shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

Z. "Waterfowl management area (WMA)" shall mean Bernardo, Brantley, Casa Colorada, Charette Lake, Jackson Lake, La Joya, McAllister Lake, Salt Lake, Seven Rivers, Tucumcari, and W.S. Huey state game commission owned or managed waterfowl management areas.

AA. "Wildlife management area" shall mean Big Hatchet, Colin Neblett, E.S. Barker, Humphries, Marquez, Rio Chama, Sargent, Socorro-Escondida, and Water Canyon wildlife management areas, the Sandhills Prairie conservation area, and state game commission owned lesser prairie-chicken areas.

BB. "Youth" shall mean those less than 18 years of age except where otherwise defined.

[19.31.5.7 NMAC - Rp, 19.31.5.7 NMAC, 8-16-2010]

19.31.5.8 LICENSE AND APPLICATION REQUIREMENTS:

A. License: It shall be unlawful to hunt blue grouse, pheasant, quail, and squirrel without having purchased a valid license for the current license year. Valid licenses for upland game hunting are general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handicapped general hunting and fishing, or small game, or junior or senior small game and fishing, or non-resident small game, and temporary small game 4-day licenses. A habitat stamp is required for those hunting on US forest service and bureau of land management properties. Hunters from 18 through 69 years of age must also purchase a habitat management and access validation except for resident 100% disabled veterans.

(1) For blue grouse hunting: in addition to a valid license, a free blue grouse permit obtained from department offices or website shall be required.

(2) For pheasant hunting on Casa Colorada and Seven Rivers youth-only, Casa Colorada, Seven Rivers and W.S. Huey WMAs: in addition to a valid license, a special permit obtained by drawing shall be required.

(3) For pheasant hunting on private lands in Valencia county: in addition to a valid license, a Valencia county landowner pheasant permit shall be required.

B. Valid dates of license

or permit: All permits or licenses shall be valid only for the dates, legal sporting arms, bag limit and area specified by the hunt code printed on the permit or license.

C. Applications:

Applications for upland game special permits shall be submitted on the appropriate application form or via the department website.

(1) No more than four persons may apply per application.

(2) It shall be unlawful to submit more than one application per species per year, unless otherwise specifically allowed by rule. Those submitting more than one application per species will result in the rejection of all applications for that species.

(3) Applications may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

(4) Applicants may apply for a first, second and third choice of seasons if applicable. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(5) All applications must be mailed to the Santa Fe office or submitted via the department website unless otherwise specifically allowed by rule. Persons desiring a Valencia county landowner pheasant hunt permit must obtain an application from registered landowners. Applications must be submitted in person to only the northwest area (Albuquerque) office. Applications for the Valencia county landowner pheasant hunt permits may be submitted up to the day prior to the hunt.

(6) The application deadline for Casa Colorada youth-only, Seven Rivers youth-only, Casa Colorada, Seven Rivers and W.S. Huey WMAs pheasant hunts shall be the first Wednesday in November.

(7) If applications for permits exceed the number of available permits, permits shall be allotted by means of a random public drawing.

(8) If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

D. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt.

[19.31.5.8 NMAC - Rp, 19.31.5.8 NMAC, 8-16-2010]

19.31.5.9 MANNER AND METHODS FOR UPLAND GAME:

A. Season and hours:

Upland game may be hunted or taken only during open seasons and only during the

period from one-half hour before sunrise to one-half hour after sunset, unless otherwise specifically allowed by rule.

(1) On wildlife management areas, the lesser prairie-chicken areas, and the Sandhills Prairie conservation area hunting hours shall be from one-half hour before sunrise to one-half hour after sunset.

(2) On waterfowl management areas (WMAs), hunting hours shall be from one-half hour before sunrise to 1:00 p.m. For the special permit pheasant hunts on the Seven Rivers WMA, W.S. Huey WMA and the Seven Rivers WMA youth-only pheasant hunt, hunting hours shall be from one-half hour before sunrise to 4 p.m.

B. Bag limit: It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation.

C. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any upland game that are illegally obtained.

D. Use of bait: It shall be unlawful for anyone to take or attempt to take any upland game, other than quail on private property, by use of bait. It shall be lawful to take quail from areas where quail feeders occur on private property.

E. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any upland game.

F. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any upland game.

G. Killing out-of-season: It shall be unlawful to kill any upland game out-of-season.

H. Legal sporting arms and ammunition:

(1) The following are legal sporting arms for pheasants, and quail:

(a) shotguns firing shot, including muzzle-loading shotguns;

(b) bows and arrows; and

(c) crossbows.

(2) The following are legal sporting arms for blue grouse, Abert's squirrels, Arizona gray squirrels, fox squirrels, eastern gray squirrels and red squirrels:

(a) shotguns firing shot, including muzzle-loading shotguns;

(b) rimfire firearms;

(c) muzzle-loading firearms;

(d) bows and arrows; and

(e) crossbows.

(3) Non-toxic shot is required for hunting on all state game commission owned lands. It shall be unlawful for any person hunting with a shotgun or muzzleloader on state game commission owned properties, to hunt with or be in possession of lead shot, or shotgun shells loaded with lead shot.

I. Drugs and explosives:

It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

J. Proof of species or sex:

(1) One foot shall remain attached to each quail taken until the bird has arrived at the personal abode of the possessor or storage facility.

(2) The head or a leg of each pheasant taken must remain attached to the bird until the bird has arrived at the personal abode of the possessor or storage facility.

K. Possession or sale of protected species: It shall be unlawful to possess, sell, or offer for sale all or part of any upland game except as provided below:

(1) License or permit: A person may possess upland game or parts thereof that they have lawfully taken (killed) under license or permit.

(2) Game taken by another: Any person may have in their possession or under their control any upland game or parts thereof that have been lawfully taken by another person, if they possess a written statement which shall be provided by the donor of the upland game, or parts thereof, and which shall contain the following:

(a) the kind and number of upland game parts donated;

(b) the date and county where the upland game was lawfully taken;

(c) the donor's name, address, and the number of the hunting license under which the upland game was lawfully taken;

(d) the date and place of the donation.

(3) Retention of live animals: It shall be unlawful to retain upland game in a live condition except under permit or license issued by the director for the following purposes:

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

(e) under a falconry permit, only those birds listed on the permit;

(f) under a scientific collection permit, one may collect and possess only those species listed on the permit;

(g) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected upland game being transported.

(4) Sale of game animal parts: Only skins, claws or feathers of legally taken upland game may be bartered or sold. The disposer must supply to the recipient a written statement which shall contain the following:

(a) description of the skin, claws, or feathers involved;

(b) the date and county where the upland game was taken;

(c) the disposer's name, address and hunting license number under which the upland game was taken;

(d) the date and place of the transaction.

L. Release of wildlife: It shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any upland game, without first obtaining a permit from the department of game and fish.

M. Use of vehicles and roads in hunting upland game:

(1) Roads: It shall be unlawful to shoot at, wound, take, attempt to take, or kill any upland game on, from, or across any graded paved, or maintained public road and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

(2) Vehicles, boats, aircraft: It shall be unlawful to shoot at any upland game from within a motor vehicle, power boat, sailboat, or aircraft.

(3) Harassing protected wildlife: It shall be unlawful, at any time, to pursue, harass, harr, drive, or rally any upland game by use of or from a motor-driven vehicle, powerboat, sailboat, or aircraft.

(4) Vehicle off of established road: During the seasons established for upland game, it shall be unlawful to drive or ride in a motor vehicle, which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) snowmobiles; 2) all landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.

(5) Closed roads: During the seasons established for any upland game, it shall be unlawful to knowingly occupy, drive, or cause to be driven any motor vehicle on a closed road when the vehicle bears a licensed hunter, angler or trapper.

(6) Mobility impaired:

(a) Shooting from a vehicle: The holder of a mobility impaired card is authorized to shoot at and kill upland game birds during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(b) Driving off established roads: Holders of a mobility impaired card may, with permission of the landowner, lessee, or land management agency, drive off established roads to hunt for or take squirrels or upland game birds, during open seasons.

(c) Assistance for mobility impaired hunter: The holder of a mobility impaired card may be accompanied by another person to assist in reducing to possession any upland game animal which has clearly been wounded by the licensed mobility impaired hunter.

N. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) Posting of signs: The state game commission may prohibit, modify, condition, or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

(2) Violating provisions of posted signs: It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

(3) Trespass on state game commission owned lands: It shall be unlawful to hunt upland game, camp, or trespass upon state game commission owned lands unless allowed under regulation.

(4) State waterfowl management areas and wildlife management areas open, species that can be hunted, and days open for hunting: Use of vehicles will be restricted to designated areas.

(a) The William S. Huey WMA and Seven Rivers WMA shall be open for the following purposes:

(i) quail hunting only on Monday, Wednesday, and Saturday during established seasons;

(ii) pheasant hunting by special permit only;

(b) The Brantley WMA (excluding the Seven Rivers waterfowl management area portion, as posted) shall be open for quail and pheasant, during established seasons.

(c) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, Elliot S. Barker, and Socorro-Escondida wildlife management areas, and the Sandhills Prairie conservation area shall be open for hunting upland game during established seasons

(d) The Big Hatchet mountain wildlife management area shall be open for quail hunting during established seasons.

(5) The Sandia ranger district of the Cibola national forest shall be open to archery only hunting for upland game during established seasons.

O. Areas closed to upland game hunting: The following areas shall remain closed to hunting, except as permitted by regulation.

(1) All state game commission owned or managed properties.

(2) Rio Grande wild and scenic river area.

(3) Sub-Unit 6B (Valles Caldera national preserve).

(4) Sugarite canyon state park.

(5) Valle Vidal area.

(6) The old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

[19.31.5.9 NMAC - Rp, 19.31.5.9 NMAC, 8-16-2010]

19.31.5.10 UPLAND GAME HUNTING SEASONS: Hunting seasons shall be as indicated below, listing the species, open areas, eligibility requirements or restrictions, season dates, and daily bag and possession limits.

2010-2013 seasons: all dates are 2010-2013 unless otherwise specified

SPECIES	OPEN AREAS	SEASON OPEN	DAILY BAG (POSSESSION) LIMITS
Blue grouse	GS-1 GS-2	Sept. 1-Oct. 15 Oct. 1-31	3 (6 in possession)
Pheasant	statewide, excluding Valencia county	Dec. 9-12, 2010, Dec. 8-11, 2011, Dec. 6-9, 2012, Dec. 12- 15, 2013	3 (males) (6 in possession)
Youth-only pheasant hunt (Special draw permit required)	Casa Colorada & Seven Rivers WMAs.	Dec. 4, 2010, Dec. 3, 2011, Dec. 1, 2012 and Dec 7, 2013	3 (males) (6 in possession)
Pheasant (Special draw permit required)	Casa Colorada, Seven Rivers, & W.S. Huey WMAs	Dec. 11, 2010, Dec. 10, 2011, Dec. 8, 2012 and Dec. 14, 2013	3 (males) (6 in possession)
Pheasant (Valencia Co.) (Landowner Permit Required)	Valencia county private lands	Dec. 11, 2010, Dec. 10, 2011, Dec. 8, 2012 and Dec. 14, 2013	3 (males) (6 in possession)
Quail: Gambel's, scaled, Northern bobwhite and Montezuma (Mearns's)	Statewide	Nov. 15 - Feb. 15	15 (singly or in aggregate; no more than 5 shall be Mearns's, possession shall be 30 singly or in aggregate – no more than 10 shall be Mearns's)
Squirrel: Abert's, Arizona gray, fox, eastern gray and red squirrel	GS-1 GS-2 S-3 S-4	Sept. 1-Oct. 31 Oct. 1-Nov. 30 Sept. 1-Oct. 31 Sept. 1-Oct. 31	8 (singly or in aggregate, possession shall be 16 singly or in aggregate)

[19.31.5.10 NMAC - Rp, 19.31.5.10 NMAC, 8-16-2010]

19.31.5.11 [RESERVED]

19.31.5.12 HUNT CODES AND PERMIT NUMBERS FOR CASA COLORADA AND SEVEN RIVERS YOUTH-ONLY PHEASANT HUNTS, CASA COLORADA, SEVEN RIVERS AND W.S. HUEY WMA PHEASANT HUNTS AND THE VALENCIA COUNTY LANDOWNER PHEASANT HUNT: Hunters may possess a Valencia county landowner permit in addition to another special permit pheasant hunt. Special permit pheasant hunts will be allocated by season as follows:

Hunt Location	2010 Season	2011 Season	2012 Season	2013 Season	Hunt Code	No. of permits
Youth-only Casa Colorada WMA	12/04	12/03	12/01	12/07	PHE-0-001	15
Youth-only Seven Rivers WMA	12/04	12/03	12/01	12/07	PHE-0-002	40
Casa Colorada WMA	12/11	12/10	12/08	12/14	PHE-0-003	10
Seven Rivers WMA	12/11	12/10	12/08	12/14	PHE-0-004	65
W.S. Huey WMA	12/11	12/10	12/08	12/14	PHE-0-005	40
Valencia county landowner permits	12/11	12/10	12/08	12/14	PHE-0-006	Unlimited

[19.31.5.12 NMAC - Rp, 19.31.5.12 NMAC, 8-16-2010]

19.31.5.13 FALCONRY SEASONS:

A. Open areas and season dates: The season for blue grouse, pheasants, quail, Abert's squirrel, Arizona gray squirrel, fox squirrel, eastern gray squirrel, and red squirrel shall be statewide and shall be open September 1 through February 28 annually during the 2010-2011 through 2013-2014 hunting seasons.

B. Daily bag and possession limits: Daily bag limits for blue grouse, pheasant, and quail shall be 3 birds (in the aggregate) and 3 squirrels (in the aggregate). Possession limits shall be: blue grouse-6; pheasant-6; quail-30 (singly or in the aggregate); Abert's, Arizona gray, fox, eastern gray and red squirrel-16 (singly or in the aggregate).

C. Provisions for possession: The falconry hunter shall not retain nor possess any protected mammal taken by a raptor except Abert's, Arizona gray, eastern gray, fox and red squirrels legally taken during open falconry season. The falconry hunter shall not retain nor possess any protected birds taken by a raptor except those upland game species listed herein that were legally taken during the open falconry season.

[19.31.5.13 NMAC - Rp, 19.31.5.13 NMAC, 8-16-2010]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 6 MIGRATORY GAME
BIRD**

19.31.6.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC,
8-16-2010]

19.31.6.2 SCOPE: Hunters
of migratory game birds. Additional
requirements may be found in Chapter 17
NMSA 1978 and Chapters 30 and 32 through
36 of Title 19.
[19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC,
8-16-2010]

**19.31.6.3 S T A T U T O R Y
AUTHORITY:** 17-1-14 and 17-1-26
NMSA 1978 provide that the New Mexico
game commission has the authority to
establish rules and regulations that it may
deem necessary to carry out the purpose of
Chapter 17 NMSA 1978 and all other acts
pertaining to protected mammals, birds, and
fish.
[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC,
8-16-2010]

19.31.6.4 DURATION: August
16, 2010 - March 31, 2011.
[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC,
8-16-2010]

19.31.6.5 EFFECTIVE DATE:
August 16, 2010 unless later date is cited at
end of individual sections.
[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC,
8-16-2010]

19.31.6.6 O B J E C T I V E :
Establishing seasons on dove, band-tailed
pigeon, sandhill crane, American coot,
common moorhen, common snipe, ducks,
geese, sora, Virginia rail, and setting falconry
seasons for migratory game birds.
[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC,
8-16-2010]

19.31.6.7 DEFINITIONS: Areas,
species, non-toxic shot, and possession limit
defined.

A. "Adult/youth" (A/Y) as
used herein, shall mean that hunt designation
where the adult and youth are permitted to
hunt together.

B. "Arrows" shall mean
only those arrows or bolts having broadheads

with steel cutting edges.

C. "Baiting" shall
mean the placing, exposing, depositing,
distributing, or scattering of any salt, grain,
scent or other feed on or over areas where
hunters are attempting to take migratory
game birds.

**D. "Bernardo north duck
hunt area"** (BND) shall mean that area
north of U.S. 60 on Bernardo waterfowl
management area (WMA).

E. "Bow" shall mean
compound, recurve, or long bow. Sights on
bows shall not project light nor magnify.

F. "Central flyway" shall
mean that portion of New Mexico east of the
continental divide, with the exception of the
Jicarilla Apache Indian reservation.

G. "Crossbows" shall
mean a device with a bow limb or band of
flexible material that is attached horizontally
to a stock and has a mechanism to hold
the string in a cocked position. Sights
on crossbows shall not project light nor
magnify.

H. "Dark goose" shall
mean Canada goose or greater white-fronted
goose.

I. "Department" shall
mean the New Mexico department of game
and fish.

J. "Department offices"
shall mean department offices in Santa
Fe, Albuquerque, Raton, Las Cruces, or
Roswell.

K. "Director" shall mean
the director of the New Mexico department
of game and fish.

L. "Dove north zone"
(north zone) shall mean that portion of New
Mexico north of I-40 from the Arizona-New
Mexico border to Tucumcari and U.S 54 at
its junction with I-40 at Tucumcari to the
New Mexico-Texas border.

M. "Dove south zone"
(south zone) shall mean that portion of New
Mexico south of I-40 from the Arizona-New
Mexico border to Tucumcari and U.S 54 at
its junction with I-40 at Tucumcari to the
New Mexico-Texas border.

**N. "Eastern New Mexico
sandhill crane hunt area"** (eastern) shall
mean that area in the following counties:
Chaves, Curry, De Baca, Eddy, Lea, Quay,
and Roosevelt.

**O. "Electronic motion
decoys"** shall mean decoys such as spinning
wing decoys that operate by electric motors
or electronic controls.

P. "Established road" is
defined as follows:

(1) a road, built or maintained
by equipment, which shows no evidence
of ever being closed to vehicular traffic by
such means as berms, ripping, scarification,
reseeding, fencing, gates, barricades or
posted closures;

(2) a two-track road completely
void of vegetation in the tracks which
shows use prior to hunting seasons for other
purposes such as recreation, mining, logging,
and ranching and shows no evidence of
ever being closed to vehicular traffic by
such means as berms, ripping, scarification,
reseeding, fencing, gates, barricades or
posted closures.

**Q. "Estancia valley
sandhill crane hunt area"** (EV) shall mean
that area beginning at Mountainair bounded
on the west by N.M. highway 55 north to
N.M. 337, north to N.M. 14, and north to
Interstate 25; on the north by Interstate
25 east to U.S. 285; on the east by U.S.
285 south to U.S. 60; and on the south by
U.S. 60 from U.S. 285 west to N.M. 55 in
Mountainair.

R. "Falconry" shall mean
hunting migratory game birds using raptors.

S. "License year" shall
mean the period from April 1 through March
31.

T. "Light geese" shall
mean snow geese, blue phase snow geese,
and Ross's geese.

**U. "Light goose
conservation order"** shall mean those
methods, bag and possession limits, and
dates approved by the U. S. fish and wildlife
service (USFWS) towards reducing over-
abundant light goose populations.

**V. "Middle Rio Grande
valley dark goose hunt area"** shall mean
Sierra, Socorro and Valencia counties.

**W. "Middle Rio Grande
valley sandhill crane hunt area"** (MRGV)
shall mean Valencia and Socorro counties.

**X. "Migratory game
bird"** shall mean band-tailed pigeon,
Eurasian-collared dove, mourning dove,
white-winged dove, sandhill crane,
American coot, common moorhen, common
snipe, ducks, geese, sora, and Virginia rail.

Y. "Modern firearms"
shall mean center-fire firearms, not to
include any fully automatic firearms. Legal
shotguns shall be only those shotguns
capable of being fired from the shoulder.

**Z. "Muzzle-loader or
muzzle-loading firearms"** shall mean those
rifles and shotguns in which the charge and
projectile are loaded through the muzzle.
Only blackpowder, pyrodex or equivalent
blackpowder substitute may be used. Use
of smokeless powder is prohibited. Legal
muzzle-loader shotguns shall be only those
shotguns capable of being fired from the
shoulder.

AA. "Non-toxic shot" shall
mean that non-toxic shot approved for use
by the USFWS.

BB. "North zone" shall
mean that portion of the Pacific flyway north
of I-40 from the Arizona-New Mexico border
to the continental divide; and that portion of

the central flyway north of I-40 from the continental divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

CC. "Pacific flyway" shall mean that portion of New Mexico west of the continental divide including the Jicarilla Apache Indian reservation.

DD. "Permanent mobility limitation" shall mean an individual that permanently has: restricted movement in both arms, or is restricted to the use of a walker, wheelchair, or two crutches to walk, or has a combination of disabilities that cause comparable substantial functional limitations. **EXCEPTION:** For the purposes of hunting migratory game birds from a vehicle, mobility limitation individuals are those that have permanently lost one or both legs.

EE. "Possession limit" shall mean twice the daily bag limit one can have in their ownership, except where otherwise defined.

FF. "Protected species" shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 New Mexico Statutes Annotated 1978 Compilation;

(2) all animals listed as endangered species or subspecies as stated in regulation(s) set by the state game commission.

GG. "Regular band-tailed pigeon hunting area" (regular BPHA) shall mean that portion of New Mexico not included in the southwest band-tailed pigeon hunt area.

HH. "Retention" or "retain" shall mean the holding of in captivity.

II. "South zone" shall mean that portion of the Pacific flyway south of I-40 from the Arizona-New Mexico border to the continental divide; and that portion of the central flyway south of I-40 from continental divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

JJ. "Southwest band-tailed pigeon hunting area" (southwest BPHA) shall mean that portion of New Mexico both south of U.S. 60 and west of I-25.

KK. "Southwest New Mexico sandhill crane hunt area" (SW) shall mean that area bounded on the south by the New Mexico/Mexico border; on the west by the New Mexico/Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico/Mexico border.

LL. "State game commission owned properties" shall mean all department owned or managed waterfowl management areas, wildlife management areas, Sandhills prairie conservation area and lesser prairie-chicken areas.

MM. "Unlimited" shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

NN. "Waterfowl management area" (WMA) shall mean Bernardo, Brantley, Casa Colorada, Charette lake, Jackson lake, La Joya, McAllister lake, Salt lake, Seven Rivers, Tucumcari, and W.S. Huey state game commission owned or managed waterfowl management areas.

OO. "Wildlife management area" shall mean Big Hatchet, Colin Neblett, E.S. Barker, Humphries, Marquez, Rio Chama, Sargent, Socorro-Escondida, and Water canyon wildlife management areas, the Sandhills prairie conservation area, and state game commission owned lesser prairie-chicken areas.

PP. "Youth" shall mean those less than 18 years of age except where otherwise defined.

QQ. "Youth waterfowl hunting days" shall mean the special seasons where only those under 16 years of age may hunt ducks and geese. A supervising adult must accompany the youth hunter. [19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 8-16-2010]

19.31.6.8 LICENSE AND APPLICATION REQUIREMENTS:

A. License: It shall be unlawful to hunt migratory game birds without having purchased a valid license for the current license year. Valid licenses are general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handicapped general hunting and fishing, or small game, or junior or senior small game and fishing, or non-resident small game, and temporary small game 4-day licenses. A migratory bird permit number shall be required. A habitat stamp is required for those hunting on US forest service and bureau of land management properties. Hunters from 18 through 69 years of age must also purchase a habitat management and access validation except for resident 100% disabled veterans. Waterfowl hunters 16 years of age and older are required to have on their possession a federal migratory bird hunting and conservation stamp (duck stamp).

(1) For band-tailed pigeon hunting and falconry: in addition to a valid license, a free band-tailed pigeon permit obtained from department offices or website shall be required.

(2) For MRGV dark goose hunting: in addition to a valid license, a free MRGV dark goose permit obtained from department offices or website shall be required.

(3) For waterfowl hunting on Bernardo WMA and La Joya WMA: in addition to a valid license, a free Bernardo/La Joya WMA permit obtained from the department website or offices shall be required.

(4) For eastern sandhill crane hunting and falconry: in addition to a valid license, a free federal sandhill crane hunting permit shall be required. Permits may be obtained from department offices or website.

(5) For Estancia valley sandhill crane, middle Rio Grande valley sandhill crane, middle Rio Grande youth-only sandhill crane, southwest sandhill crane hunting, Bernardo WMA light goose, and Bernardo WMA youth-only waterfowl hunting: in addition to a valid license, a special permit obtained by drawing shall be required.

(6) For Estancia valley sandhill crane falconry hunting: in addition to a valid license, falconers shall have in their possession a special permit obtained from only the Santa Fe and Albuquerque offices. Up to 5 permits may be issued on a first come basis.

(7) For the light goose conservation order: in addition to a valid license, a free light goose conservation order permit obtained from department offices or website shall be required.

B. Valid dates of license or permit: All permits or licenses shall be valid only for the dates, legal sporting arms, bag limit and area specified by the hunt code printed on the permit or license.

C. Applications: Applications for Bernardo WMA light goose, Bernardo WMA youth-only light goose, Bernardo WMA youth-only waterfowl, EV sandhill crane, MRGV sandhill crane, SW sandhill crane, and MRGV youth-only sandhill crane hunt permits shall be submitted on the appropriate application form or department website.

(1) For permits issued by drawing, the appropriate application fee as defined by 19.30.9 NMAC shall be required by each applicant per application submitted.

(2) No more than four persons may apply per application. For the MRGV youth-only sandhill crane hunt, no more than two persons may apply per application.

(3) It shall be unlawful to submit more than one application per species per year, unless otherwise specifically allowed by rule. Those submitting more than one application per species will result in the rejection of all applications for that species.

(4) Applications may be returned to the sender if such applications are not on the proper form or do not supply adequate

information.

(5) Applicants may apply for a first, second and third choice of seasons if applicable. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(6) All applications must be mailed to the Santa Fe office or submitted via the department website unless otherwise specifically allowed by rule.

(a) A person desiring a band-tailed pigeon, MRGV dark goose, or Bernardo/La Joya WMA permit shall apply in person at one of the department offices, by mail to the Santa Fe office only, or via the department website. Applicants shall submit their name, mailing address, and the number from their valid hunting license.

(b) A person desiring an EV sandhill crane falconry permit shall apply in person to only the department's Albuquerque or Santa Fe offices, or by mail to the Santa Fe office only.

(7) The application deadline date for the Bernardo WMA youth-only waterfowl; and EV, MRGV, MRGV youth-only, and SW sandhill crane hunt permits shall be the second Wednesday in September.

(a) for the Bernardo WMA youth-only waterfowl hunt permits, no more than three persons may apply per application;

(b) up to two hunt choices may be awarded by drawing for the Bernardo youth only waterfowl permits;

(c) if any permits are available after the drawing, a person may submit a new application at one of the department offices; up to 2 hunt choices may be awarded;

(d) hunters may have a maximum of 4 Bernardo youth-only waterfowl permits per license year; and

(e) only two applications per hunt code will be drawn, or issued after the drawing for Bernardo youth only waterfowl permits.

(8) The deadline date for application for the Bernardo WMA light goose hunt permits shall be the first Wednesday in November.

(9) If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

(10) If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

D. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth-only hunt. EXCEPTION: During the youth

waterfowl hunt days only those who have not reached their 16th birthday may hunt waterfowl.

[19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 8-16-2010]

19.31.6.9 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:

A. Season and hours:

Migratory game birds may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset, unless otherwise specifically allowed by rule.

(1) On wildlife management areas, the lesser prairie-chicken areas, and the Sandhills prairie conservation area hunting hours shall be from one-half hour before sunrise to sunset.

(2) On waterfowl management areas (WMA)s and the Bottomless lakes overflow, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m. For hunting September teal on Bernardo and La Joya WMAs hunting hours are from one-half hour before sunrise to sunset.

(3) During the light goose conservation order hunt dates, hunting hours shall mean from one-half hour before sunrise to one-half hour after sunset.

B. Bag limit: It is unlawful for any person to hunt for or take more than one daily bag limit allowed by regulation, unless otherwise specifically allowed by rule.

(1) There shall be no daily bag or possession limit for Eurasian-collared dove.

(2) There shall be no daily bag or possession limit for light geese during the light goose conservation order hunt dates.

C. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any migratory game bird that are illegally obtained.

D. Use of bait: It shall be unlawful for anyone to take or attempt to take any migratory game bird by use of bait such as grain, salt or other feed.

E. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any migratory game bird.

F. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any migratory game bird, unless otherwise specifically allowed by rule. During the light goose conservation order hunt dates, electronic calling devices are allowed.

G. Killing out-of-season: It shall be unlawful to kill any migratory game bird out-of-season.

H. Legal sporting arms

and ammunition:

(1) The following are legal sporting arms for migratory game birds:

(a) shotguns firing shot, shotguns shall not be capable of holding no more than three shells;

(b) muzzle-loading shotguns firing shot;

(c) bows and arrows;

(d) crossbows; and

(e) during the light goose conservation order hunt dates, as listed herein, shotguns capable of holding more than three shells are lawful.

(2) Non-toxic shot use is required for hunting:

(a) all migratory game bird species, excluding dove, band-tailed pigeons, and eastern sandhill cranes; and

(b) on all state game commission owned lands.

(3) Use of lead shot: It shall be unlawful for any person hunting migratory game birds, other than dove, band-tailed pigeon and eastern sandhill crane, to hunt with or be in possession of any shotgun shells loaded with toxic shot or for any person using a muzzleloader to be in possession of lead shot.

I. Drugs and explosives:

It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

J. Proof of species or sex:

(1) One fully feathered wing must remain attached to all migratory game birds, except dove and band-tailed pigeon, until the bird has arrived at the personal abode of the possessor or storage facility.

(2) All Eurasian-collared dove in possession must have an identifiable feathered wing attached until the bird has arrived at the personal abode of the possessor or storage facility. Any harvested dove without an identifiable wing attached, will count towards the daily dove bag and possession limits.

K. Possession or sale of migratory game bird: It shall be unlawful to possess, sell, or offer for sale all or part of any migratory game bird except as provided below:

(1) License or permit: A person may possess migratory game bird or parts thereof that they have lawfully taken (killed) under license or permit.

(2) Game taken by another: Any person may have in their possession or under their control any migratory game bird or parts thereof that have been lawfully taken by another person, if they possess a written statement which shall be provided by the donor of the migratory game bird, or parts thereof, and which shall contain the following:

(a) the kind and number of game parts donated;

(b) the date and county where the game was lawfully taken;

(c) the donor's name, address, and the number of the hunting license under which the game was lawfully taken; and

(d) the date and place of the donation.

(3) Retention of live animals: It shall be unlawful to retain migratory game bird in a live condition except under permit or license issued by the director for the following purposes:

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

(d) a rehabilitation permit;

(e) under a falconry permit, only those birds listed on the permit;

(f) under a scientific collection permit, one may collect and possess only those migratory game bird species listed on the permit; and

(g) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the migratory game bird being transported.

(4) Sale of game animal parts: It shall be unlawful to sale or barter any parts or feathers from migratory game birds.

(5) Falconry provisions for possession: the falconry hunter shall not retain nor possess any migratory game bird of bird taken by a raptor except those species of protected birds taken during open falconry season.

L. Release of wildlife: It shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any migratory game bird, without first obtaining a permit from the department of game and fish.

M. Use of vehicles and roads in hunting migratory game birds:

(1) Roads: It shall be unlawful to shoot at, wound, take, attempt to take, or kill any migratory game bird on, from, or across any graded paved, or maintained public road and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

(2) Vehicles, boats, aircraft: It shall be unlawful to shoot at any migratory game bird from within a motor vehicle, power boat, sailboat, or aircraft. EXCEPTION - Migratory game birds may be taken from a motor-driven boat (or other craft with attached motor) or sailboat when resting at anchor or fastened within or immediately alongside a fixed hunting blind or is used solely as a means of picking up dead birds.

(3) Harassing migratory game birds: It shall be unlawful, at any time, to pursue, harass, harry, drive, or rally any migratory game bird by use of or from a motor-driven vehicle, powerboat, sailboat,

or aircraft.

(4) Vehicle off of established road: During the seasons established for any migratory game bird, it shall be unlawful to drive or ride in a motor vehicle, which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) Snowmobiles; 2) All landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.

(5) Closed roads: During the seasons established for any migratory game bird, it shall be unlawful to knowingly occupy, drive, or cause to be driven any motor vehicle on a closed road when the vehicle bears a licensed hunter, angler or trapper.

(6) Mobility impaired:

(a) Shooting from a vehicle: The holder of a mobility impaired card is authorized to shoot at and kill migratory game birds during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(b) Driving off established roads: Holders of a mobility impaired card may, with permission of the landowner, lessee, or land management agency, drive off established roads to hunt for or take migratory game birds, during open seasons.

(c) Assistance for mobility impaired hunter: The holder of a mobility impaired card may be accompanied by another person to assist in reducing to possession any migratory game bird which has clearly been wounded by the licensed mobility impaired hunter. Persons assisting in reducing to possession any wounded migratory game birds shall be fully licensed.

N. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) Posting of signs: The state game commission may prohibit, modify, condition, or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

(2) Violating provisions of posted signs: It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

(3) Trespass on state game commission owned lands: It shall be unlawful to hunt migratory game birds, camp, or trespass upon state game commission owned lands unless otherwise specifically allowed by rule.

(4) State waterfowl management

areas and wildlife management areas open, species that can be hunted, and days open for hunting: Use of vehicles will be restricted to designated areas.

(a) The Brantley WMA (excluding the Seven Rivers waterfowl management area portion, as posted) shall be open for all migratory game bird hunting during established statewide seasons, except the old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

(b) Bernardo WMA: Those hunting waterfowl on Bernardo WMA shall have in their possession a free Bernardo/La Joya WMA permit obtained from the department website or offices.

(i) That portion of the Bernardo WMA south of US-60 is open to teal hunting each day of the September teal season and the youth waterfowl days. That portion of the Bernardo WMA north of US-60 is open to only youth hunters during each day of the September teal season and the youth waterfowl days.

(ii) That portion of Bernardo WMA east of the unit 7 drain, 600 feet south of US-60 and portions north of US-60, shall be open only on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) That portion of Bernardo WMA west of the unit 7 drain, 600 feet south of US-60 and portions north of US-60, shall be open only on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) Designated posted areas of Bernardo WMA north of US-60 are open during the light goose conservation order. Areas east of the unit 7 drain shall be open on Monday, Wednesday, and Saturday; areas west of the unit 7 drain shall be open on Sunday and Thursday.

(v) Designated areas open for Bernardo youth waterfowl hunts are: north of highway U.S. 60, between U.S. 60 and the posted closure areas. Areas east of the unit 7 drain shall be open on Monday, Wednesday, and Saturday; areas west of the unit 7 drain shall be open on Sunday and Thursday.

(c) The Big Hatchet mountain wildlife management area shall be open for dove hunting during established seasons.

(d) The Charette lake WMA shall be open each day of the youth waterfowl days; and on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail,

sora, common moorhen, American coot, and common snipe during established seasons. Charette lake WMA is closed during the September teal season.

(e) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez, and Elliot S. Barker wildlife management areas shall be open for hunting dove and band-tailed pigeon during established seasons.

(f) The portion of Jackson lake WMA west of NM-170 shall be open on Mondays, Wednesdays, and Saturdays to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe. The portion of Jackson lake WMA east of NM-170 shall be open to falconry only migratory game bird hunting during established seasons.

(g) The lesser prairie-chicken management areas and Sandhills prairie conservation area shall be open to hunt dove during established seasons.

(h) La Joya WMA: Those hunting waterfowl on La Joya WMA shall have in their possession a free Bernardo/La Joya WMA permit obtained from the department website or offices.

(i) The entire La Joya WMA shall be open to teal hunting each day of the September teal season and each day of the youth waterfowl days.

(ii) That portion of La Joya WMA north of the main east/west entrance road and west of the railroad tracks shall be open on Saturdays, Mondays, and Wednesdays to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) That portion of La Joya WMA south of the main east/west entrance road and west of the railroad tracks shall be open on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, Sora, common moorhen, American coot, and common snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) That portion of La Joya WMA east of the railroad tracks shall be open to hunt dove, ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(i) The McAllister lake WMA shall be open each day of the youth waterfowl days; and on Monday, Wednesday, and Saturday to hunt ducks, light geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(j) The Salt Lake WMA shall be open to teal hunting each day of the September teal season and youth waterfowl days; and open on Monday, Wednesday, and Saturday for ducks, geese, Virginia rail, sora, common moorhen, American coot and common Snipe during established seasons.

(k) The Seven Rivers WMA shall be open each day of the youth waterfowl days; and for migratory game bird hunting in designated areas as posted only on Monday, Wednesday, and Saturday during established statewide seasons.

(l) The Socorro-Escondida wildlife management area shall be open for migratory game bird hunting.

(m) The Tucumcari WMA shall be open each day of the September teal and youth waterfowl days; and on Saturday, Sunday, and Wednesday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(n) The William S. Huey WMA shall be open for dove hunting only on Monday, Wednesday, and Saturday during established statewide seasons.

(5) The Sandia ranger district of the Cibola national forest shall be open to archery only migratory game bird hunting during established seasons.

O. Areas closed to migratory game bird hunting: The following areas shall remain closed to hunting, except as permitted by regulation.

(1) All wildlife management areas.

(2) Rio Grande wild and scenic river area.

(3) Sub-Unit 6B (Valles Caldera national preserve).

(4) Sugarite canyon state park.

(5) Valle Vidal area.

(6) The old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 28.

(7) That portion of the stilling basin below Navajo dam lying within a line starting from N. M. 511 at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately 1/4 mile downstream, southwest along the fence to N. M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

(8) Areas within Valencia county may be closed to migratory game bird hunting that meets the following criteria:

(a) The discharge of a shotgun in the area has been identified by department personnel as a public safety risk because of its proximity to an inhabited area. For the purpose of this section, "public safety risk" shall be defined as a reasonable potential risk of injury at an occupied place of residence.

(b) The discharge of a shotgun in the area is not prohibited by any other statute, rule, regulation or ordinance.

(c) These areas shall be designated by posting of signs and identified on the department website.

P. Regulations pertaining to boats, other floating devices, and motors:

(1) On Bernardo, La Joya, Salt lake and Jackson lake WMAs only boats and other floating devices using no motors shall be permitted during waterfowl season.

(2) On Tucumcari WMA, only boats and other floating devices using electric motors or with motors that are not in use shall be permitted.

(3) On Charette and McAllister lakes boats and other floating devices with or without motors shall be permitted; provided, however, that boats or floating devices shall not be operated at greater than normal trolling speed.

(4) Department of game and fish personnel or persons authorized by the director may use gasoline powered outboard motors on all lakes mentioned in this chapter while performing official duties.

Q. Electronic motion decoys: It shall be unlawful to use electronic motion decoys while hunting waterfowl on those portions of Bernardo WMA, north of US highway 60.

[19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 8-16-2010]

A. 2010-2011 season; all dates are 2010 unless otherwise specified:

SPECIES	OPEN AREAS	SEASON DATES	DAILY BAG LIMIT (Possession limits are double the daily bag limit after opening day)
Dove: Mourning and white-winged dove north zone		Sept. 1-Nov. 9	15 (singly or in aggregate)
	south zone	Sept. 1-Oct. 9 & Dec. 1-31	15 (singly or in aggregate)
Eurasian-collared dove	statewide	Sept. 1-Dec. 31	no bag or possession limit
Band-tailed pigeon (free permit required)	southwest BPHA	Oct. 1-20	5
	regular BPHA	Sept. 1-20	5
Sandhill crane (free permit required)	eastern	Oct. 31- Jan. 31, 2011	3
Sandhill crane (special draw permit required)	MRGV	Oct. 30- Oct. 31	3 (6 per season)
	EV	Oct. 30 - Nov. 7	3
	Southwest	Oct. 30 - Nov. 7	3
	MRGV	Nov. 20-21	3 (6 per season)
	MRGV	Dec. 4-5	3 (6 per season)
	Southwest	Jan. 8-9, 2011	3 (6 per season)
	MRGV	Jan. 15-16, 2011	3 (6 per season)
	MRGV youth-only	Nov. 13	3
			(possession-6, regular and special seasons combined)

CENTRAL FLYWAY

SPECIES	SEASON DATES	DAILY BAG LIMIT (Possession limits are double the daily bag limit after opening day)
September teal: blue-winged teal, green-winged teal, and cinnamon teal	Sept. 18-26	4 (singly or in the aggregate)
Youth waterfowl days: north zone	Oct. 2-3	same as north zone
Youth waterfowl days: south zone	Oct. 16-17	same as north zone
Ducks: north zone	Oct. 9 - Jan. 12, 2011	6 (singly or in the aggregate) -- that consists of no more than 5 mallard (of which only 2 may be female mallard, [Mexican-like ducks are included towards the mallard bag limit]); 3 wood duck; 2 redhead; 2 hooded mergansers; 2 pintail, 2 scaup, and 1 canvasback
south zone	Oct. 27 - Jan. 30, 2011	same as north zone
American coot	same as above zone dates	15
Common moorhen	Oct. 2 - Dec. 10	1
Common snipe	Oct. 16 - Jan. 30, 2011	8

Virginia rail & sora	Sept. 18 - Nov. 26	10 (singly or in the aggregate)
Dark goose: Canada & white-fronted geese (regular season closed in Bernalillo, Sandoval, Sierra, Socorro, and Valencia counties)	Oct. 17 - Jan. 31, 2011	4
Special MRGV season (free permit required)	Jan. 1 - Jan. 23, 2011	2 (2 per season)
Light goose: Ross's & snow geese	Oct. 17 - Jan. 31, 2011	20/80 possession
Light goose conservation order	Feb. 1, 2011 - Mar. 10, 2011	no bag or possession limit

PACIFIC FLYWAY

SPECIES	SEASON DATES	DAILY BAG LIMIT (Possession limits are double the daily bag limit after opening day)
Youth Waterfowl Days	Oct. 2-3	same as regular season below including scaup
Ducks:	Oct. 18 - Jan. 30, 2011	7 (singly or in the aggregate)-- that consists of no more than 2 female mallard, 2 redhead, 2 pintail, 1 canvasback
scaup	Nov. 06 - Jan. 30, 2011	3 daily included in the aggregate duck bag
American coot & common moorhen	Oct. 18 - Jan. 30, 2011	12 daily (singly or in the aggregate)
Common snipe	Oct. 16 - Jan. 30, 2011	8
Virginia rail & sora	Sept. 18 - Nov. 26	10 daily (singly or in the aggregate)
Goose: north zone	Sept. 25 - Oct. 10 and Nov. 1 - Jan. 30, 2011	3 dark geese, 10 light geese
south zone	Oct. 16 - Jan. 30, 2011	2 dark geese, 10 light geese

B. Light goose conservation measures: Under the director's discretion with the verbal concurrence of the state game commission chairman or his designee, the department may implement the light goose conservation measures approved by the U.S. fish and wildlife service (USFWS). Methods, bag and possession limits, and dates allowed shall be those as approved by the USFWS. A free permit is required.

[19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 8-16-2010]

19.31.6.11 FALCONRY SEASONS:

A. Species that can be taken, open areas, and hunting seasons: 2010-2011 season, all dates are 2010 unless otherwise specified:

(1) The season for dove shall be statewide and shall be open September 1 through November 12 and November 28 through December 31.

(2) The season for band-tailed pigeon shall be September 1 through December 16 for the regular hunting area and October 1 through January 15, 2011 for the southwest hunting area. A free permit is required.

(3) The season for sandhill crane shall be in the eastern New Mexico sandhill crane hunt area and shall be open from October 17 through January 31, 2011. A free permit is required.

(4) The season for sandhill crane in the Estancia valley shall be October 30 through December 28. A special season permit is required.

(5) Duck: Central flyway seasons shall be open in the North zone - September 18-26, October 2-3, and October 9 through January 12, 2011; South zone - September 18-26, October 16-17, and October 27 through January 30, 2011. Pacific flyway seasons shall be as follows: October 2-3, and October 18 through January 30, 2011.

(6) Light goose: Central flyway seasons shall be open October 17 through January 31, 2011. Pacific flyway season shall be north zone - September 25 through October 10, and November 1 through January 30, 2011; south zone - October 17 through January 30, 2011.

(7) Dark goose: Central flyway seasons shall be open October 17 through January 31, 2011. Pacific flyway season shall be north zone - September 25 through October 10, and November 1 through January 30, 2011; south zone - October 17 through January 30, 2011.

(8) Common snipe: Central and Pacific flyways seasons shall be: October 16 through January 30, 2011.

(9) Common moorhen: Central flyway season shall be: October 2 through January 16, 2011. Pacific flyway season shall be: October 16 through January 30, 2011.

(10) Sora and Virginia rails: Central and Pacific flyways seasons shall be: September 18 through January 2, 2011.

B. Daily bag limits: shall be three birds (singly or in the aggregate) and possession limits shall be six birds (singly or in the aggregate) as established herein.

(1) There is no daily bag or possession limit on Eurasian-collared dove.

(2) Season limit for sandhill crane in the Estancia valley shall be 9 birds.

[19.31.6.11 NMAC - Rp, 19.31.6.11 NMAC, 8-16-2010]

19.31.6.12 REQUIREMENTS AND PERMITS FOR BERNARDO LIGHT GOOSE HUNT:

A. Up to 24 permits at Bernardo WMA, per hunting day, will be available. Applications submitted for the LTG-O-102 hunt must have a minimum of one youth hunter and one hunter over 18 years of age.

B. Hunt packages for the Bernardo light goose hunts.

LTG-O-101 12/31

LTG-O-102 1/22/2011

LTG-O-103 1/24/2011

C. Only 30 rounds per hunter will be allowed at the blinds when participating on the Bernardo WMA light goose special permit hunts.

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 8-16-2010]

19.31.6.13 REQUIREMENTS AND PERMITS FOR BERNARDO YOUTH-ONLY LIGHT GOOSE HUNT:

A. Up to 12 permits will be available for the December 29 (YLG-O-101) youth-only light goose hunt at Bernardo WMA.

B. Only 30 rounds per hunter will be allowed at the blinds when participating on the Bernardo WMA light goose special permit hunts.

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 8-16-2010]

19.31.6.14 REQUIREMENTS AND PERMITS FOR THE SPECIAL MIDDLE RIO GRANDE VALLEY DARK GOOSE SEASON: Unlimited permits obtained at department offices or website will be available to hunt dark geese in Valencia, Socorro, and Sierra counties, with a daily bag limit of two dark geese and a season limit of two dark geese.

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 8-16-2010]

19.31.6.15 YOUTH WATERFOWL HUNTING DAYS: Requirements for youth hunters to participate in this hunt are as follows:

A. Youth hunters must be under 16 years old.

B. An adult, at least 18 years old, must accompany the youth hunter in the field (the adult may not hunt ducks; but may participate in other seasons that are open on the special youth day).

C. Only ducks, coots, and moorhens may be taken by the youth hunter (sandhill cranes, geese or any other migratory game bird species may not be taken unless the season is open).

[19.31.6.15 NMAC - Rp, 19.31.6.17 NMAC, 8-16-2010]

19.31.6.16 REQUIREMENTS AND HUNT CODES FOR THE SPECIAL BERNARDO YOUTH WATERFOWL HUNT AREA:

A. The Bernardo WMA ponds north of highway U.S. 60 will be open for waterfowl hunting to groups consisting of a minimum of a youth hunter, under 18 years of age, and a supervising adult.

B. Requirements for blind selection:

(1) Blind selection during the September teal season and federal youth waterfowl days including weekends is on a first come basis. Once all blinds are selected, no other hunters may enter the area.

(2) Blind selection on weekdays between October 30 through December 16 and January 3-30, 2011 is on a first come basis. Once all blinds are selected, no other hunters may enter the area.

(3) Blind selection on all weekends and weekdays between December 18 through January 2, 2011 will be available by permit only issued by drawing.

(a) up to two hunt choices may be awarded by drawing; and

(b) if any permits are available after the drawing, a person may submit a new application at one of the department offices; up to 2 hunt choices may be awarded; hunters may have a maximum of 4 Bernardo youth-only permits per license year; and

(c) only two applications per hunt code will be drawn, or issued after the drawing.

C. 2010-2011 season, hunt codes and permits available:

Hunt Date	Hunt Code	No. of permits		Hunt Date	Hunt Code	No. of permits
October 30	BNY-0-101	6		December 22	BNY-0-119	6
October 31	BNY-0-102	6		December 23	BNY-0-120	6
November 6	BNY-0-103	6		December 25	BNY-0-121	6
November 7	BNY-0-104	6		December 26	BNY-0-122	6
November 13	BNY-0-105	6		December 27	BNY-0-123	6
November 14	BNY-0-106	6		December 28	BNY-0-124	6
November 20	BNY-0-107	6		December 29	BNY-0-125	6
November 21	BNY-0-108	6		December 30	BNY-0-126	6
November 27	BNY-0-109	6		January 1	BNY-0-127	6
November 28	BNY-0-110	6		January 2	BNY-0-128	6
December 4	BNY-0-111	6		January 8	BNY-0-129	6
December 5	BNY-0-112	6		January 9	BNY-0-130	6
December 11	BNY-0-113	6		January 15	BNY-0-131	6
December 12	BNY-0-114	6		January 16	BNY-0-132	6
December 18	BNY-0-115	6		January 22	BNY-0-133	6
December 19	BNY-0-116	6		January 23	BNY-0-134	6
December 20	BNY-0-117	6		January 29	BNY-0-135	6
December 21	BNY-0-118	6		January 30	BNY-0-136	6

D. Designated areas open for Bernardo youth waterfowl hunts are: north of highway U.S. 60, between U.S. 60 and the posted closure areas.

(1) That portion of Bernardo WMA east of the unit 7 drain, shall be open only on Monday, Wednesday, and Saturday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

(2) That portion of Bernardo WMA west of the unit 7 drain, shall be open only on Sunday and Thursday to hunt ducks, geese, Virginia rail, sora, common moorhen, American coot, and common snipe during established seasons.

E. Use of motorized motion decoys is prohibited.

[19.31.6.16 NMAC - Rp, 19.31.6.16 NMAC, 8-16-2010]

19.31.6.17 HUNT CODES AND PERMITS NUMBERS FOR THE SPECIAL ESTANCIA VALLEY, MIDDLE RIO GRANDE VALLEY, AND SOUTHWEST NEW MEXICO SANDHILL CRANE SEASONS:

A. Nine separate sandhill crane seasons are scheduled with up to a total of 509 permits available. The permits will be allocated by season as follows: 2010-2011 season:

Season Dates	Hunt Code	Hunt Location	No. of permits
October 30- 31	SCR-0-101	MRGV	80
October 30- November 7	SCR-0-102	EV	60
November 20-21	SCR-0-103	MRGV	70
December 4-5	SCR-0-104	MRGV	70
October 30- November 7	SCR-0-105	SW	70
January 15-16, 2011	SCR-0-106	MRGV	70
January 8-9, 2011	SCR-0-107	SW	60
October 30 through December 28	SCR-6-108	EV falconry	5
November 13	SCR-0-109	MRGV youth	24

B. Hunters who participate in the MRGV seasons shall be required to check-out at designated check stations when they harvest any sandhill cranes. Those hunters participating in the southwest seasons will be requested to check-out at designated check stations at the end of each hunt date.

C. All EV, MRGV, SW sandhill crane hunters, and EV falconers are required to submit a special permit sandhill crane harvest report to the department within 5 days after the end of their hunt. Hunters and falconers that do not submit a questionnaire within five days of the close of their hunt will be considered ineligible to receive a sandhill crane permit the following year.

[19.31.6.16 NMAC - Rp, 19.31.6.17 NMAC, 8-16-2010]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.30.7 NMAC, Sections 2, 3 and 6 through 13, effective August 16, 2010.

6.30.7.2 SCOPE: This rule applies to local education agencies (LEAs) (public school districts [including high schools, charter schools and state-supported schools], and bureau of Indian education-funded high schools), high school students who attend secondary schools, and public postsecondary institutions in New Mexico. Districts and public postsecondary institutions are required to implement rules no later than the beginning of the 2008-2009 school year.

[6.30.7.2 NMAC - Rp, 6.30.7.2 NMAC, 06/30/08; A, 08/16/10]

6.30.7.3 STATUTORY AUTHORITY: Section [22-2-1, 22-2-2, 9-25-8,] 9-24-8, 21-1-1.2, 22-2-1, 22-2-2 NMSA 1978.

[6.30.7.3 NMAC - Rp, 6.30.7.3 NMAC, 06/30/08; A, 08/16/10]

6.30.7.6 OBJECTIVE: The purposes of dual credit are:

A. [to increase educational opportunities for high school students] to provide high school students the opportunity to enroll in college-level academic or career-technical courses offered by a post-secondary educational institution, and

B. [to increase the overall quality of instruction and learning available through secondary schools:] to permit those enrolled students to simultaneously earn credit toward high school graduation and a post-secondary degree or certificate.

[6.30.7.6 NMAC - Rp, 6.30.7.6 NMAC, 6/30/08; A, 08/16/10]

6.30.7.7 DEFINITIONS:

A. "ACT[is the academic competency test] high school code" is the unique code provided to each high school by ACT, Inc., a 501(c)(3) not-for-profit organization.

B. "Agreement" is the dual credit master agreement.

C. "Classification of instructional program" or "CIP" is a taxonomic coding scheme that contains titles and descriptions of instructional programs, primarily at the postsecondary level. The CIP was originally developed to facilitate the United States department of education national center for education statistics' collection and reporting of postsecondary degree completions, by major field of study, using standard classifications that capture the majority of program activity.

D. "Common core" [refers to the thirty-five (35) semester hour common core of general education lower division courses eligible for transfer to other New Mexico postsecondary institutions as per 5.55.3.9 NMAC:] means the common general education core of lower division college-level courses for which, pursuant to Subsection D of Section 21-1B-3 NMSA 1978 and 5.55.3.9 NMAC credit is eligible for transfer from one public postsecondary institution to another and is applied toward requirements for postsecondary graduation and receipt of a degree.

E. "Concurrent enrollment" refers to enrollment of high school students in courses at the postsecondary level that are not designated as dual credit. This includes courses not listed within the dual credit master agreement between the eligible [district] LEAs and postsecondary institution. Students who are concurrently enrolled may also be enrolled in the dual credit program if they meet eligibility requirements as specified in [5.55.4 NMAC and] 6.30.7 NMAC.

F. "Core course" means courses required for high school graduation as defined in 22-13-1.1 NMSA, 1978, excluding physical education activity courses and electives.

G. "Developmental course" refers to courses with CIP codes of 32.0101, 32.0107 or 32.0199 that fall within the basic skills or career exploration/awareness skills categories.

[H. "District" as defined in 6.30.2.9 NMAC means a public school district, including a charter school or charter school district, and a state-supported educational institution and a state-chartered school.]

[I. H. "Dual credit council" is an advisory group consisting of staff of the public education department and higher education department that issues recommendations to the cabinet secretaries of the public education and higher education departments regarding dual credit issues outside of the scope of the agreement.

[J. L. "Dual credit program" means a program that allows high school students to enroll in college-level courses offered by a postsecondary institution that may be academic or career technical but not remedial or developmental, and simultaneously to earn credit toward high school graduation and a postsecondary degree or certificate.

[K. J. "Elective course" means courses defined and approved as such by local school boards.

[L. K. "FERPA" is the Family Educational Rights and Privacy Act [20 U.S. Code 1232g].

[M. L. "Form" is the dual credit request form.

[N. M. "General fees" as defined in 5.7.18 NMAC and Subsection B of Section 21-1-4-NMSA 1978 means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. An institution may charge fees in addition to general fees that are course-specific or that pertain to a smaller proportion of students.

[O. N. "Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Secs. 300.320 through 300.324.

O. "Local educational agency (LEA)" is a district as defined in 6.29.1.7 NMAC (a public school district, a state-chartered charter school or a state educational institution), or a bureau of Indian education-funded high school.

P. "Physical education activity course" refers to courses with CIP code of 36.0108.

[P. Q. "Postsecondary institution" refers to a public postsecondary educational institution operating in the state, including a community college, branch community college, technical vocational institute, [and] four-year educational institution, and tribal colleges.

[Q. R. "Remedial course" refers to courses with CIP codes of 32.0104 or 32.0108 that fall within the numeracy and computational skills, precollegiate mathematics skills, precollegiate reading skills, precollegiate writing skills, or communications skills categories.

S. "Tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution located in New Mexico that is accredited by the north central association of colleges and schools.

[6.30.7.7 NMAC - Rp, 6.30.7.7 NMAC, 06/30/08; A, 08/16/10]

6.30.7.8 UNIFORM MASTER AGREEMENT.

A. The agreement specifies the means by which the state will provide equal opportunities to all public high school students who wish to participate in the dual credit program.

B. [Districts] LEAs and postsecondary institutions providing dual credit programs shall complete the agreement and the [district] LEA shall submit the completed agreement to the public education department.

C. A completed agreement shall contain signatures from all parties

and includes an appendix developed collaboratively by the [district] LEA and postsecondary institution that specifies eligible dual credit courses.

D. [Districts] LEAs may complete agreements with multiple postsecondary institutions.

E. A fully executed copy of each agreement shall be submitted by the [district] LEA to the public education department within 10 days of approval.

F. The agreement:

(1) specifies eligible courses, academic quality of dual credit courses, student eligibility, course approval, course requirements, required content of the form, state reporting, liabilities of parties, and student appeals; and

(2) states the roles, responsibilities, and liabilities of the [district] LEA, the postsecondary institution, student, and the student's family.

G. Duties and responsibilities of the postsecondary institution. The postsecondary institution shall:

(1) designate a representative to review and sign the completed form with the understanding that only forms endorsed by all parties shall constitute a dual credit approval request;

(2) determine, in collaboration with the [district] LEA, the required academic standing of each student eligible to participate in the dual credit program;

(3) collaborate with the [district] LEA to reach agreement on admission and registration of eligible dual credit students for the stated semester;

(4) employ a method of qualifying the student for dual credit that demonstrates that the student has the appropriate skills and maturity to benefit from the instruction requested;

(5) provide advisement to review the appropriateness of each student's enrollment in a course prior to registration in terms of academic readiness, age requirements, and programmatic issues;

(6) provide the form to eligible students and appropriate [district] LEA staff online and in hard copy;

(7) approve the form for each student on a course-by-course basis each semester based on each student's prior coursework, career pathway, or academic readiness;

(8) provide a copy of each approved form to the appropriate [district] LEA representative;

(9) provide course placement evaluation and consider a high school college readiness assessment to verify a student's academic skill level and to ensure compliance with course prerequisites;

(10) provide information and orientation, in collaboration with the

[district] LEA to the student and parent or guardian regarding the responsibilities of dual credit enrollment including academic rigor, time commitments, and behavioral expectations associated with taking college courses and the importance of satisfactorily completing the postsecondary institution credits attempted in order for dual credit to be awarded;

(11) inform students of course requirement information which includes course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(12) advise the parent or guardian of FERPA rules;

(13) waive all general fees for dual credit courses;

(14) waive tuition for high school students taking dual credit courses;

(15) make every effort to adopt textbooks for at least three years;

(16) provide the [district] LEA within the first thirty days of the academic term, access to each student's official schedule of classes as verification of registration; the [district] LEA shall notify the postsecondary institution if the report is in conflict with the school endorsed registration;

(17) track progress of dual credit enrolled students on the issue of academic performance and provide reports, as needed, to the [district] LEA;

(18) retain the official transcript or grade report of the dual credit student that records the term of enrollment, courses/credits attempted, courses/credits completed, grades and grade point average earned;

(19) release, at the request of the student, official postsecondary institution transcripts in accordance with the postsecondary institution's transcript request practices;

(20) provide final grades to the [district] LEA for each dual credit student;

(21) deliver final grades for all dual credit students to the [district] LEA with sufficient time to be included with final grades; this schedule shall be defined by the parties in the agreement and shall address the time frame appropriate for determining student graduation from high school;

(22) comply with data collection and reporting provisions in 6.30.7.12 NMAC;

(23) approve faculty for all dual credit courses;

(24) retain educational records in accordance with New Mexico statutes and record retention regulations as per 1.20.3 NMAC;

(25) have a student appeals process pertaining to student enrollment in dual credit programs (postsecondary institution decisions are final); and

(26) have the right to appeal to the dual credit council on issues related to implementing the dual credit program, agreement, and rules.

H. Duties and responsibilities of the [district] LEA. The [district] LEA shall:

(1) designate a representative to collaborate with the postsecondary institution to reach agreement on admission and registration of eligible dual credit students for the stated semester;

(2) determine, in collaboration with the postsecondary institution, the required academic standing of each student eligible to participate in the dual credit program;

(3) collaborate with the postsecondary institution to reach agreement on admission and registration of eligible dual credit students for the stated semester;

(4) employ a method of qualifying the student for dual credit based on factors which may include academic performance review, use of next step plan, assessments, advisement and career guidance, and therefore recommend enrollment at the postsecondary institution with evidence that the student has the appropriate skills and maturity to benefit from the instruction requested;

(5) provide information and orientation to students about opportunities to participate in dual credit programs during student advisement, academic support, and formulation of annual next step plans;

(6) provide the form to eligible students and appropriate [district] LEA staff online and in hard copy;

(7) approve the form for each student on a course-by-course basis each semester based on each student's prior coursework, career pathway, or academic readiness;

(8) provide information and orientation, in collaboration with the postsecondary institution, to the student and student's family regarding the responsibilities of dual credit enrollment including academic rigor, time commitments, and behavioral expectations associated with taking college courses and the importance of satisfactorily completing the college credits attempted in order for dual credit to be awarded;

(9) inform students of course requirement information which includes course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(10) notify the postsecondary institution if the student's official schedule of classes is in conflict with the school endorsed registration;

(11) provide appropriate accommodations and services for special education students while the students are

enrolled in dual credit classes, including academic adjustments and auxiliary aids and services for eligible students across educational activities and settings (e.g. equipping school computers with screen-reading, voice recognition or other adaptive hardware or software and providing note-takers, recording devices, or sign language interpreters, or other adaptation as required by law);

(12) inform students in need of accommodations or other arrangements of the need to speak directly with the disabilities coordinator at the postsecondary institution;

(13) work collaboratively with the postsecondary institution to submit a student's request for change in registration according to postsecondary institution policies and within officially published deadlines;

(14) make it clear to students that if they fail or withdraw from dual credit classes that they were intending to use to substitute for a high school requirement that they will have to make up those credits in order to graduate; the dual credit course grade will appear on the student high school transcript;

(15) pay the cost of the required textbooks and other course supplies for the postsecondary course the dual credit student is enrolled in through purchase arrangements with the bookstore at the postsecondary institution or other cost-efficient methods;

(16) collaborate with the postsecondary institution to offer dual credit courses at the high school site according to [district] LEA site time blocks;

(17) furnish an official high school transcript to the postsecondary institution if required by the postsecondary institution;

(18) record, unchanged, the grade given to the dual credit student by the postsecondary institution on each student high school transcript;

(19) retain educational records in accordance with New Mexico statutes and record retention regulations as per 1.20.2 NMAC;

(20) comply with data collection and reporting provisions in 6.30.7.12 NMAC;

(21) have a student appeals process pertaining to student enrollment in dual credit programs ([district] LEA decisions are final); and

(22) have the right to appeal to the dual credit council on issues related to implementing the dual credit program, agreement, and rules.

I. Duties and responsibilities of the student. The student shall:

(1) qualify for dual credit courses offered in the fall, winter and summer by:

(a) being enrolled during the fall and winter in a [district] LEA in one-half or

more of the minimum course requirements approved by the New Mexico public education department for public school students under its jurisdiction or by being in physical attendance at a bureau of Indian education-funded high school at least three documented contact hours per day pursuant to 25 CFR 39.211(c);

(b) obtaining permission from the [district] LEA representative (in consultation with the student's individualized education program team, as needed), the student's parent or guardian, and postsecondary institution representative through a fully executed form prior to enrolling in a dual credit course; and

(c) meeting postsecondary institution requirements to enroll as a dual credit student;

(2) discuss potential dual credit courses with the appropriate [district] LEAs and postsecondary institution staff, including postsecondary institution admission and registration requirements, course requirements, credits to be attempted, credits to be awarded, scheduling under dual credit, and implications for failure to successfully complete the course;

(3) obtain course requirements for each course, including course prerequisites, course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(4) meet the prerequisites and requirements of the course(s) to be taken;

(5) complete the form available online or in hard copy from the [district] LEA or postsecondary institution;

(6) obtain approval for enrolling in the dual credit program each semester by acquiring all necessary signatures on the form;

(7) register for courses during the postsecondary institution's standard registration periods (note: enrollments shall not be permitted after the close of posted late registration);

(8) discuss any request for a change in registration (add, drop, withdrawal) and complete all necessary forms and procedures with appropriate [district] LEA and postsecondary institution staff;

(9) comply with the [district] LEA and postsecondary institution student code of conduct and other institutional policies;

(10) have rights and privileges that include:

(a) the rights and privileges equal to those extended to [district] LEA and postsecondary institution students, unless otherwise excluded by any section of this agreement;

(b) use of the postsecondary institution library, course-related labs and other instructional facilities, use of the postsecondary institution programs

and services such as counseling, tutoring, advising, and special services for the students with disabilities, and access to postsecondary institution personnel and resources as required; and

(c) the right to appeal, in writing to the [district] LEA or postsecondary institution, as applicable, any decision pertaining to enrollment in the dual credit program;

(11) return the textbooks and unused course supplies to the [district] LEA when the student completes the course or withdraws from the course (subject to provisions in Subsection B of Section 22-15-10 NMSA 1978 regarding lost or damaged instructional material);

(12) arrange transportation to the site of the dual credit course; depending upon the time and course location, the student may have access to transportation through the [district] LEA if the dual credit course is offered during the school day;

(13) be responsible for course-specific (e.g. lab, computer) fees;

(14) allow educational records to be retained and disseminated in accordance with the requirements of the FERPA;

(15) sign the FERPA release form, along with student parent or guardian, if applicable, in order to participate in dual credit courses; and

(16) abide by regular operating calendars, schedules and associated requirements of both the [district] LEA and postsecondary institution; in instances in which the calendars are incongruent, the student is required to independently satisfy both calendar requirements and may consult with [district] LEA counselors for assistance. [6.30.7.8 NMAC - Rp, 6.30.7.8 NMAC, 06/30/08; A, 08/16/10]

6.30.7.9 LIMITATIONS OF THE AGREEMENT.

A. With the exception of the appendix, the agreement may not be altered or modified by either party.

B. The agreement shall automatically renew for additional fiscal years unless either party notifies the other party of their intent not to renew 60 days before the end of the fiscal year.

C. [Districts] LEAs, in collaboration with postsecondary institutions, may modify the list of dual credit courses in the appendix of the agreement. Modifications shall be submitted to the higher education department and the public education department by the end of each semester.

[6.30.7.9 NMAC - Rp, 6.30.7.9 NMAC, 06/30/08; A, 08/16/10]

6.30.7.10 LIABILITIES OF PARTIES.

A. Dual credit status shall

neither enhance nor diminish on-campus liabilities for the [district] LEA or the postsecondary institution.

B. Management of risk and liabilities shall be in accordance with the [district] LEA and the postsecondary institution policies and codes of conduct.

C. Personal liabilities for the student shall be equal to those of regular postsecondary institution students.

[6.30.7.10 NMAC - Rp, 6.30.7.10 NMAC, 06/30/08; A, 08/16/10]

6.30.7.11 ELIGIBLE COURSES.

A. Types of courses.

(1) College courses that are academic or career technical [~~but not remedial or developmental~~] and that simultaneously earn credit toward high school graduation and a postsecondary degree or certificate shall be eligible for dual credit. Remedial, developmental and physical education activity courses are not eligible for dual credit.

(2) Courses taken for audit are not eligible for dual credit.

[~~(2)~~] (3) Dual credit courses may be taken as elective or core course (except physical education activity course) high school credits.

[~~(3)~~] Dual credit courses may satisfy the requirements of high school core courses when the department standards and benchmarks are met and curriculum is aligned to meet postsecondary requirements.

[~~(4)~~] Dual credit courses may substitute for high school core courses when the dual credit council determines there are exigent circumstances. For example, there is limited high school capacity; staff, space or scheduling and the cabinet secretaries approve the dual credit council recommendation.]

(4) Dual credit courses must meet the public education department standards and benchmarks.

(5) College courses eligible for dual credit shall meet the rigor for postsecondary institution credit and be congruent with the postsecondary institution's academic standards.

(6) Dual credit courses offered in high school settings shall conform to college academic standards.

(7) Course requirements for high school students enrolled in dual credit courses shall be equal to those of regular college students.

(8) Dual credit courses that are part of the general education common core for postsecondary institutions are eligible for transfer among New Mexico postsecondary institutions pursuant to Subsection D of 21-1B-3 NMSA 1978.

B. Identifying courses.

(1) The [district] LEA in

collaboration with the postsecondary institution shall determine a list of academic and career technical courses eligible for dual credit for inclusion into the appendix.

(2) The appendix shall indicate [~~whether the course is a core or elective high school course, the higher education common course number, if applicable, the name of the postsecondary institution, the name of the LEA, the date, course subject and number, course title, location of course delivery and semesters offered.~~]

(3) The [district] LEA shall annually submit the appendix to the higher education department and the public education department; Subsection C of 6.30.7.9 NMAC still applies.

(4) The higher education department and the public education department shall post the appendix on their respective websites and update the appendix as needed.

C. Course delivery.

(1) Dual credit courses may be offered at [districts] LEAs, postsecondary institutions, and off-campus centers as determined by the [district] LEA in collaboration with the postsecondary institution offering the courses.

(2) Dual credit courses may be delivered during or outside of regular [district] LEA hours.

(3) Postsecondary institutions may offer dual credit courses via distance learning (ITV, online, hybrid, correspondence) in accordance with [5.55.4 NMAC and] 6.30.7 NMAC as this option becomes available and cost-effective. All dual credit course rules apply.

(4) [Districts] LEAs and postsecondary institutions participating in the cyber academy shall be subject to applicable rules pertaining to it.

D. Semesters dual credit may be taken; caps for dual credit; nature of high school credit earned.

(1) Eligible students may enroll in dual credit courses year-round.

(2) There is no state limit to the number of credits a student may earn through dual credit in an academic term; however, the student must meet eligibility requirements.

(3) Unless otherwise approved by the cabinet secretaries of the higher education and public education departments, [~~one secondary school credit shall be awarded for the successful completion of three credit hours of postsecondary institution instruction for elective courses not comparable to existing district elective courses~~] successful completion of three credit hours of postsecondary instruction shall result in the awarding of one high school unit for said completed postsecondary course. If the [district] LEA and postsecondary institution determine that a different ratio is

warranted for a particular dual credit course comparable to [district] LEA core courses in order to meet public education department standards and benchmarks, they may appeal to the council, which may recommend a different ratio to the cabinet secretaries of the public education and higher education departments. The joint decision of the public education and higher education department cabinet secretaries shall be final.

E. Dual credit council.

(1) The cabinet secretaries of the higher education department and public education department shall appoint individuals to a dual credit council consisting of six members.

(2) Council composition. The council shall consist of an equal number of higher education department and public education department staff [~~The higher education and public education department staff serve as council chairs in alternating years.~~] with the council chairs alternating between the departments every two years.

(3) The council shall administer an appeals process for [district] LEA and postsecondary institution representatives to address issues outside the scope of the agreement, including the determination of alignment of course content to determine the appropriate credit ratio.

(4) The council shall issue recommendations to the department secretaries on issues not addressed in the agreement.

(5) [Districts] LEAs and postsecondary institutions shall be allowed to continue current practices regarding core courses offered for dual credit until the council issues its recommendations or no later than the beginning of the 2009-2010 school year, the time that dual credit courses become a high school graduation requirement.

(6) The higher education department and public education department cabinet secretaries shall act jointly upon dual credit council recommendations.

[6.30.7.11 NMAC - Rp, 6.30.7.11 NMAC, 06/30/08; A, 08/16/10]

6.30.7.12 DATA COLLECTION AND REPORTING.

A. Data collection.

(1) Each semester, a form shall be used to document each student request for enrollment in courses for dual credit [courses] and the review and approval process within the [district] LEA and postsecondary institution. The postsecondary institution may require additional forms and information from the student.

(2) A completed form shall contain the high school student first name, middle initial, and last name, unique state student identification number, student grade level or expected date of high school graduation,

student address (street address, city, state, and zip code), student county of residence, student telephone number, student gender, ACT high school code, secondary school name, postsecondary institution name, postsecondary institution course information (schedule number, course number, course section, course title, day, time, location, higher education credits, high school credits semester and year), a signed FERPA release form, required signatures, check boxes that indicate: whether form was completed and signed by all parties, whether student meets course prerequisites, and, if applicable, whether student high school record was received; applicable placement exam scores, high school grade point average, expected graduation date, and, if applicable, date of birth.

(3) In the event of scheduling changes, the postsecondary institution may change course information.

(4) Each [~~district~~] LEA and postsecondary institution shall use the completed form to capture dual credit student data.

(5) Each [~~district~~] LEA and postsecondary institution shall devise procedures for capturing dual credit data from the form.

(6) If applicable, each postsecondary institution shall bear responsibility for obtaining each dual credit student's social security number to meet data reporting requirements.

(7) Each postsecondary institution shall capture the public school student identification number retrieved from the completed form for each dual credit high school student.

(8) The public education department shall modify student transcripts to include the student identification number.

(9) The public education department shall capture the postsecondary institution course subject and number and course title from the appendix of each completed agreement.

B. Data reporting.

(1) For each completed form received, each [~~district~~] LEA shall indicate which courses a dual credit student takes within the public education department data system.

(2) Each postsecondary institution shall report dual credit student data to the higher education department as stated in 5.6 NMAC.

(3) Each [~~district~~] LEA shall submit the dual credit report during the appropriate reporting period to the public education department that contains:

(a) the number of dual credit students enrolled in college courses; and

(b) the courses taken and grades earned of each dual credit student.

(4) Each postsecondary institution

shall submit the dual credit report during the appropriate reporting period to the higher education department that contains:

(a) the number of dual credit students enrolled in college courses; and

(b) the courses taken and grades earned of each dual credit student.

(5) The higher education department and the public education department shall verify and reconcile the respective dual credit reports at the end of each academic year.

(6) The public education department shall report to the legislature the high school graduation rates for participating [~~districts~~] LEAs for dual credit students once the students graduate from high school.

(7) The higher education department shall report to the legislature on the New Mexico postsecondary institutions dual credit students ultimately attend.

(8) The higher education department and the public education department shall annually report to the legislature the estimated cost of providing the statewide dual credit program, including tuition, fees, textbooks, and course supplies. [6.30.7.12 NMAC - Rp, 6.30.7.12 NMAC, 6/30/08; A, 08/16/10]

6.30.7.13 [~~NON—PUBLIC~~] HOME SCHOOL OR PRIVATE SCHOOL STUDENTS

A. A home school[;] or private school[; ~~or tribal school~~] student who meets the eligibility criteria may receive both high school and college credit, provided that the student pays the full cost of the college courses.

B. [~~Non—public~~] Home school or private school students taking college courses for both high school and college credit shall be considered as being concurrently enrolled by the postsecondary institution for the purposes of data reporting. [6.30.7.13 NMAC - Rp, 6.30.7.13 NMAC, 6/30/08; A, 08/16/10]

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.5 NMAC, Section 13, effective August 16, 2010.

15.2.5.13 RUNNING OF THE RACE:

A. EQUIPMENT.

(1) No whip shall weigh more than one pound nor exceed 31 inches in length, including the popper. No whip shall be used unless it has affixed to the end a looped popper not less than one and one-quarter (1 1/4) inches in width, and not over three (3) inches in length, and be feathered above the popper with not less than three (3) rows of feathers, each feather not less than one (1) inch in length. There shall be no holes in the popper. All whips are subject to inspection

and approval by the stewards.

(2) No bridle shall exceed two pounds.

(3) Reins. No jockey, apprentice jockey, exercise person or any person mounted on a horse shall ride, breeze, exercise, gallop or workout a horse on the grounds of a facility under the jurisdiction of the commission unless the horse is equipped with a nylon rein or a safety rein. A safety rein is a rein with a wire or nylon cord stitched into the traditional leather rein during the manufacturing process and the safety cord is attached to the bit with a metal clasp.

(4) Toe grabs with a height greater than two millimeters worn on the front shoes of thoroughbred horses while racing are prohibited. The horse shall be scratched and the trainer may be subject to fine.

(5) A horse's tongue may be tied down with clean bandages, gauze or tongue strap.

(6) No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter, the paddock judge, and the stewards.

(7) No licensee may change any equipment used on a horse in its last race without approval of the paddock judge or stewards.

(8) [~~All jockeys and exercise riders~~] Any licensed assistant starter and any licensee mounted on a horse or stable pony on the association's racing surface (racetrack surface) must wear a [fastened] properly fastened New Mexico racing commission approved protective helmet and [fastened] safety vest [when mounted]. The safety vest worn by a jockey shall weigh no more than two pounds and all vests shall be designed to provide shock-absorbing protection to the upper body of at least a rating of five, as defined by the British equestrian trade association (BETA).

B. RACING NUMBERS.

(1) Each horse shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

(2) In the case of a coupled entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry shall appear in the official program as 1 and 1A.

(3) Each horse in the mutuel field shall carry a separate number or may carry the same number with a distinguishing letter following the number.

C. JOCKEY REQUIREMENTS.

(1) Jockeys shall report to the jockeys' quarters at the time designated by the association. Jockeys shall report their engagements and any overweight to the

clerk of scales. Jockeys shall not leave the jockeys' quarters, except to ride in scheduled races, until all of their riding engagements of the day have been fulfilled except as approved by the stewards.

(2) A jockey who has not fulfilled all riding engagements, who desires to leave the jockeys' quarters, must first receive the permission of the stewards and must be accompanied by an association security guard.

(3) Except as otherwise provided by this subsection, a jockey engaged for a certain race or for a specified time may not fail or refuse to abide by the engagement agreement, unless excused by the stewards. Failure to fulfill riding engagements may result in disciplinary action.

(4) A jockey may be excused by the stewards from fulfilling the jockey's riding engagement if the jockey believes the horse he or she is to ride is unsafe, or the racecourse he or she is to ride on is unsafe, or the jockey is ill or injured, or other extenuating circumstances. No jockey may take off a mount for reasons of safety without first mounting and taking that horse to the track and/or commission veterinarian unless that horse is unruly in the paddock. In that event a jockey's fee is not earned.

(5) The stewards may require a jockey who is excused from fulfilling a riding engagement, because of illness or injury, to pass a physical examination conducted by a licensed physician not employed by the association before resuming race riding.

(6) While in the jockeys' quarters, jockeys shall have no contact or communication with any person outside the jockeys' quarters other than commission personnel and officials, an owner or trainer for whom the jockey is riding or a representative of the regular news media, except with the permission of the stewards. Any communication permitted by the stewards may be conducted only in the presence of the clerk of scales or other person designated by the stewards.

(7) Jockeys shall be weighed out for their respective mounts by the clerk of scales not more than 30 minutes before post time for each race.

(8) A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of scales. In the event an owner or trainer elects to remove a jockey from his or her mount after naming a rider at the time of draw, the stewards may require a double jockey fee to be paid. The fee to be paid is equal to that earned by the jockey who rode the horse. The fee shall not be considered earned when a jockey(s), of their own free will, take themselves off their mounts, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above rule shall be at the discretion of the stewards.

All jockey protests must be filed prior to the race.

(9) Only valets employed by the association shall assist jockeys in weighing out.

(10) A jockey's weight shall include his/her clothing, boots, saddle and its attachments and any other equipment except the whip, bridle, bit or reins, safety helmet, safety vest, blinkers, goggles and number cloth.

(11) Seven pounds is the limit of overweight any horse is permitted to carry.

(12) Once jockeys have fulfilled their riding engagements for the day and have left the jockeys' quarters, they shall not be re-admitted to the jockeys' quarters until after the entire racing program for that day has been completed, except with permission of the stewards.

D. Paddock to Post.

(1) Each horse shall carry the full weight assigned for that race from the paddock to the starting post, and shall parade past the stewards' stand, unless excused by the stewards. The post parade shall not exceed 12 minutes, unless otherwise ordered by the stewards. It shall be the duty of the stewards to ensure that the horses arrive at the starting gate as near to post time as possible.

(2) In the post parade, all pony persons, or trainers who pony horses, must wear upper body apparel in accordance with the policy of the commission.

(3) After the horses enter the track, no jockey may dismount nor entrust his horse to the care of an attendant unless, because of accident occurring to the jockey, the horse or the equipment, and with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and their horses may be attended by others. After the horses enter the track, only the jockey, an assistant starter, the official veterinarian, the racing veterinarian or an outrider or pony rider may touch the horse before the start of the race.

(4) If a jockey is seriously injured on the way to the post, the horse may be returned to the paddock and a replacement jockey obtained.

(5) After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner unless otherwise directed by the stewards. Once at the post, the horses shall be started without unnecessary delay.

(6) In case of accident to a jockey or his/her mount or equipment, the stewards or the starter may permit the jockey to dismount and the horse to be cared for during the delay, and may permit all jockeys to dismount and all horses to be attended to during the delay.

(7) If a jockey is thrown on the way from the paddock to the post, the horse must

be remounted, returned to the point where the jockey was thrown and then proceed over the route of the parade to the post. The horse must carry its assigned weight from paddock to post and from post to finish.

(8) If a horse leaves the course while moving from paddock to post, the horse shall be returned to the course at the nearest practical point to that at which it left the course, and shall complete its parade to the post from the point at which it left the course unless ordered scratched by the stewards.

(9) No person shall willfully delay the arrival of a horse at the post.

(10) The starter shall load horses into the starting gate in any order deemed necessary to ensure a safe and fair start. An appointed representative may tail the horse with the starter's consent. In case of an emergency, the starter may grant approval for a horse to be tailed. In any case, the steward's shall be notified of who is tailing horses.

E. POST TO FINISH.

(1) The start.

(a) The starter is responsible for assuring that each participant receives a fair start.

(b) If, when the starter dispatches the field, any door at the front of the starting gate stalls should not open properly due to a mechanical failure or malfunction or should any action by any starting personnel directly cause a horse to receive an unfair start, the stewards may declare such a horse a non-starter.

(c) Should a horse, not scratched prior to the start, not be in the starting gate stall thereby causing it to be left when the field is dispatched by the starter, the horse shall be declared a non-starter by the stewards.

(d) Should an accident or malfunction of the starting gate, or other unforeseeable event compromise the fairness of the race or the safety of race participants, the stewards may declare individual horses to be non-starters, exclude individual horses from one or more pari-mutuel pools or declare a "no contest" and refund all wagers except as otherwise provided in the rules involving multi-race wagers.

(2) Interference, jostling or striking.

(a) A jockey shall not ride carelessly or willfully so as to permit his/her mount to interfere with, impede or intimidate any other horse in the race.

(b) No jockey shall carelessly or willfully jostle, strike or touch another jockey or another jockey's horse or equipment.

(c) No jockey shall unnecessarily cause his/her horse to shorten its stride so as to give the appearance of having suffered a foul.

(3) Maintaining a straight course.

(a) When the way is clear in a race, a horse may be ridden to any part of the course, but if any horse swerves, or is ridden to either side, so as to interfere with, impede or intimidate any other horse, it is a foul.

(b) The offending horse may be disqualified, if in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful or the result of careless riding.

(c) If the stewards determine the foul was intentional, or due to careless riding, they may fine or suspend the guilty jockey.

(d) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts or swerves out of its lane in such a manner that it interferes with, impedes or intimidates another horse, it is a foul and may result in the disqualification of the offending horse.

(4) Disqualification.

(a) When the stewards determine that a horse shall be disqualified for interference, they may place the offending horse behind such horse as in their judgment it interfered with, or they may place it last.

(b) If a horse is disqualified for a foul, any horse or horses with which it is coupled as an entry may also be disqualified.

(c) When a horse is disqualified for interference in a time trial race, it shall receive the time of the horse it is placed behind plus one-hundredth of a second penalty or more exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

(d) The stewards may determine that a horse shall be unplaced for the purpose of purse distribution and trial qualification.

(e) In determining the extent of disqualification, the stewards in their discretion may: declare null and void a track record set or equaled by a disqualified horse, or any horses coupled with it as an entry; affirm the placing judges' order of finish and suspend or fine a jockey if, in the stewards' opinion, the foul riding did not affect the order of finish; disqualify the offending horse and not penalize a jockey if in the stewards' opinion the interference to another horse in a race was not the result of an intentional foul or careless riding on the part of a jockey.

(5) Horses shall be ridden out: All horses shall be ridden out in every race. A jockey shall not ease up or coast to the finish, without adequate cause, even if the horse has no apparent chance to win prize money.

(6) Use of whips.

(a) Although the use of a whip is not required, any jockey who uses a whip during a race shall do so only in a manner consistent with exerting his/her best efforts to win.

(b) In all races where a jockey will ride without a whip, an announcement of such fact shall be made over the public address system.

(c) No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the ordinary whip approved, shall be possessed by anyone, or applied by anyone to the horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.

(d) Whips shall not be used on two-year-old horses before March 1 of each year.

(e) Indiscriminate use of the whip is prohibited including whipping a horse: on the head, flanks or on any other part of its body other than the shoulders or hind quarters; during the post parade except when necessary to control the horse; excessively or brutally causing welts or breaks in the skin; when the horse is clearly out of the race or has obtained its maximum placing; persistently even though the horse is showing no response under the whip.

(7) Horse leaving the racecourse. If a horse leaves the racecourse during a race, it must turn back and resume the race from the point at which it originally left the course.

(8) Returning after the finish.

(a) After a race has been run, the jockey shall ride promptly to the finish line, dismount and report to the clerk of scales to be weighed in. Jockeys shall weigh in with all pieces of equipment with which they weighed out.

(b) If a jockey is prevented from riding to the finish line because of an accident or illness to the jockey or the horse, the jockey may walk or be transported to the scales, or may be excused from weighing in by the stewards.

(9) Unsaddling. No person shall assist a jockey with unsaddling except with permission of the stewards and no one shall place a covering over a horse before it is unsaddled.

(10) Weighing in.

(a) A jockey shall weigh in at the same weight at which he/she weighed out, and if under that weight by more than two pounds, his/her mount shall be disqualified from any portion of the purse money.

(b) In the event of such disqualification, all monies wagered on the horse shall be refunded unless the race has been declared official.

(c) If any jockey weighs in at more than two pounds over the proper or declared weight, the jockey shall be fined or suspended or ruled off by the stewards, having due regard for any excess weight caused by rain or mud. The case shall be reported to the commission for such action, as it may deem proper.

(11) Dead heats.

(a) When a race results in a dead heat, the dead heat shall not be run off, owners shall divide except where division would conflict with the conditions of the races.

(b) When two horses run a dead heat for first place, all purses or prizes to which first and second horses would have been entitled shall be divided equally between them; and this applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

(c) In a dead heat for first place, each horse involved shall be deemed a winner and liable to penalty for the amount it shall receive.

(d) When a dead heat is run for second place and an objection is made to the winner of the race, and sustained, the horses, which ran a dead heat, shall be deemed to have run a dead heat for first place.

(e) If the dividing owners cannot agree as to which of them is to have a cup or other prize, which cannot be divided, the question shall be determined by lot by the stewards.

(f) On a dead heat for a match, the match is off for pari-mutuel payoffs and mutuels are refunded.

[15.2.5.13 NMAC - Rp, 15 NMAC 2.5.13, 03/15/2001; A, 08/30/2007; A, 12/01/08; A, 06/30/09; A, 09/15/09; A, 08/16/10]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.1 NMAC Sections 7, 12 and addition of new section 14, effective August 21, 2010.

16.62.1.7 DEFINITIONS: The following rules and regulations are for the purpose of implementing the provisions of the New Mexico Real Estate Appraisers Act.

A. Terms starting with the letter 'A' are defined as follows.

(1) "Acceptable" appraisal experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, review appraisal, market analysis, real estate counseling/consulting, highest and best use analysis and feasibility analysis. All experience claimed after ~~[December 1, 1990]~~ January 30, 1989, must be in conformance with applicable national uniform standards of professional appraisal practice (USPAP). Appraisal experience acceptable toward licensing or certification must have been gained under the supervision of an appraiser who is certified at a level equal to or greater than the license or certificate the applicant is seeking.

(2) "Appraisers act" or "act" means the New Mexico Real Estate Appraisers Act as defined in Section 61-30-1 NMSA 1978.

(3) "Appraisal management company (AMC)" means a corporation, partnership, sole proprietorship, subsidiary, limited liability company or other business entity that:

(a) contracts with independent appraisers to perform real estate appraisal services for clients;

(b) receives requests for real estate appraisal services from clients and for a fee paid by client, enters into an agreement with one of more independent appraisers to perform the real estate appraisal services contained in the request;

(c) otherwise serves as a third-party broker of appraisal management service between clients and appraiser.

(4) "Appraisal review" is the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal, appraisal review, or appraisal consulting assignment.

B. Terms starting with the letter 'B'. [RESERVED]

C. Terms starting with the letter 'C' are defined as follows.

(1) "Complaint committee" shall be appointed by the board. The chairperson of the committee shall be an appraiser board member. The board appointed complaint committee is for the purpose of review of complaints and shall make recommendations to the board as to its findings. No real estate appraiser organization shall have a majority membership on the committee.

(2) "Complex" means a one to four family residential property appraisal in which the property to be appraised, the form of ownership, or the market conditions are atypical.

(3) "Content approval for distance education" non-academic credit college courses provided by a college shall be approved by the appraiser qualifications board (AQB) and the New Mexico real estate appraisers board.

D. Terms starting with the letter 'D' are defined as follows.

(1) "Direct supervision" means that a supervising appraiser is physically present to direct and oversee the production of each appraisal assignment.

(2) "Duly made application" means an application to the New Mexico real estate appraisers board including Subparagraphs (a) through (g) set out below, in addition to any other requirements of the board:

(a) a completed application on the form provided by the board; the form must be signed by the applicant attesting to the truthfulness of the information provided in the application;

(b) letters of verification from at least three individuals who are not related to the applicant but who are acquainted personally and professionally with him/her and who can attest that the applicant is of good moral character; and is competent;

(c) a statement attesting that he/she is a native, a naturalized citizen or a legal resident of the United States;

(d) transcripts or certificates or statements showing successful completion of the required appraisal courses;

(e) a recent photograph of the applicant in which the applicant clearly is discernible; the photograph must be at least two inches by three inches in size;

(f) a check or money order for the fees set out in 16.62.12.8 NMAC;

(g) an appraiser experience log recorded on the forms approved by the board or on another approved form, if required.

E. Terms starting with the letter 'E' are defined as follows.

(1) "Education advisory committee" shall be appointed by the board for the purpose of review of applications for course approval and sponsorship approval of appraiser educational offerings and shall make recommendations to the board as to its findings. Membership in a professional organization or association shall not be a prerequisite to serve on the committee. No real estate appraiser organization shall have a majority membership on the committee.

(2) "Ethics [provision] rule" emphasizes the personal and professional obligations and responsibilities of the individual appraiser.

(3) "Experience" is defined as verifiable time spent in performing tasks in accordance with the definition of "appraisal" and "appraisal assignment", as stated in the act, Section 61-30-3 NMSA 1978. Such tasks include inspecting and analyzing properties; assembling and analyzing relevant market data; forming objective opinions as to the value, quality or utility of such properties; and preparing reports or file memoranda showing data, reasoning and conclusions. Professional responsibility for the valuation function is essential for experience credit.

(4) "Experience" will be submitted to the board in the form of a log, which indicates assignment information and type, compensation status, time spent on the assignment and whether the applicant signed the report. Experience credit claimed on the log must be attested to by the supervising appraiser. Experience logs are subject to review and request for supporting documentation.

(5) "Experience review process" is the method by which appraiser experience is approved for credit toward licensure or certification. The process includes the review of the experience log submitted by the applicant; selection of three or more

entries for review of the reports and any additional file memoranda; and approval of experience hours claimed and conformance of reports with applicable national uniform standards of professional appraisal practice (USPAP) standards.

F. Term starting with the letter 'F' is defined as follows: "FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and its amendments.

G. Terms starting with the letter 'G'. [RESERVED]

H. Terms starting with the letter 'H'. [RESERVED]

I. Terms starting with the letter 'I'. [RESERVED] "IDECC" - international distance education certification center.

J. Terms starting with the letter 'J'. [RESERVED]

K. Terms starting with the letter 'K'. [RESERVED]

L. Terms starting with the letter 'L' are defined as follows.

(1) "Licensee" means an apprentice, license, residential certificate or general certificate.

(2) "Location" means the offices of the New Mexico real estate appraisers board will be located in Santa Fe, New Mexico.

M. Term starting with the letter 'M' is defined as follows: "module" is an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum. All modules identified in the required core curriculum for a specific classification must be successfully completed to satisfy the educational requirements as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

N. Term starting with the letter 'N' is defined as follows: "nonresident appraiser" for the purpose of 61-30-20 of the New Mexico Real Estate Appraisers Act, nonresident applicants; reciprocity, means an individual who holds a current apprentice registration, license, or certificate, and is in good standing, in another state.

O. Terms starting with the letter 'O'. [RESERVED]

P. Terms starting with the letter 'P' are defined as follows.

(1) "Practicing appraiser" means a state licensed or certified appraiser in good standing, engaged in performing appraisal assignments.

(2) "Primary business location" means the geographical location of a business where the supervisor and trainee spend the majority of their time. A trainee may perform work only in areas where the supervising appraiser has competency in the geographical location and property type.

Q. Terms starting with the

letter 'Q'. [RESERVED]

R. Term starting with the letter 'R' is defined as follows: "required core curriculum" is a set of appraisal subject matter (known as 'modules') which require a specified number of educational hours at each credential level; as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

S. Term starting with the letter 'S' is defined as follows; "supervisor" means a certified residential or certified general appraiser in good standing in the training jurisdiction and not subject to any disciplinary action within the last two (2) years that affects the supervisor's legal ability to engage in appraisal practice.

T. Term starting with the letter 'T' is defined as follows: "trainee" means an individual ~~[who is being]~~ taught to become a state licensed or certified appraiser under the direct supervision of a supervising appraiser.

U. Term starting with the letter 'U' is defined as follows: "uniform standards of professional appraisal practice" (USPAP) means the uniform standard or the profession standard promulgated by the appraisal foundation and adopted by rules pursuant to the Real Estate Appraiser Act and deals with the procedures to be followed in which an appraisal, analysis, or opinion is communicated.

V. Terms starting with the letter 'V'. [RESERVED]

W. Term starting with the letter 'W' is defined as follows: "work file" is documentation necessary to support an appraiser's analyses, opinions, and conclusions.

X. Terms starting with the letter 'X'. [RESERVED]

Y. Terms starting with the letter 'Y'. [RESERVED]

Z. Terms starting with the letter 'Z'. [RESERVED]

[1/14/00; 16.62.1.7 NMAC - Rn & A, 16 NMAC 62.1.7, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 11/15/08; A, 10/16/2009; A, 08/21/2010]

16.62.1.12 SUPERVISING APPRAISER/TRAINEE:

A. Supervision of trainees: An appraiser may engage a declared trainee to assist in the performance of real estate appraisals and related activities, provided the supervising certified real estate appraiser:

(1) has been certified for at least two years;

(2) has no more than three trainees working under his supervision at one time; prior to the date any trainee begins performing real estate appraisal and related activities under his or her supervision, the supervisor must inform the board of the name of the trainee on the declaration form

prescribed by the board; the supervisor must also inform the board within ten days when a trainee is no longer working under his supervision;

(3) actively and personally supervises the trainee:

(a) when training for residential license or residential certification the supervisor must accompany the trainee on inspections of the subject property on the first 75 assignments; after that point, the trainee may perform the inspections without the presence of the supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of the national uniform standards of professional appraisal practice (USPAP) for the property type and provided the property is less than 100 miles from the supervisor's primary business location; the supervisor must accompany the trainee on all inspections of subject properties that are located more than 100 miles from the supervisor's primary business location; the supervisor and trainee must have primary business location in the same state;

(b) when training for general certification the supervisor must accompany the trainee on inspections of the subject property on the first ~~[40]~~ 50 non-residential assignments; after that point, the trainee may perform the inspections without the presence of the supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of the national uniform standards of professional appraisal practice (USPAP) for the property type and market area; the supervisor and trainee must have primary business location in the same state;

(4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee are utilized; the trainee's supervisor [signs] is required to sign the appraisal report and certifies the report is in compliance with the uniform standards of professional appraisal practice (USPAP); the supervisor is required to sign the appraisal experience log at least every 30 days;

(5) must attend a supervisor/trainee education program approved by the appraisal board regarding the role of a supervisor prior to the declaration of the first new trainee or within 90 days after such supervision begins; if the supervisor does not take the class within 90 days after the supervision begins, the trainee may no longer work under the supervision of that supervisor until the class is taken; thereafter the supervisor must attend the class every other licensing cycle;

(6) shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

B. Trainee. All trainees shall perform all real estate appraisal and

related activities under the immediate, active, and personal supervision of a certified real estate appraiser. All appraisal reports must be signed by the trainees declared supervisor. By signing the appraisal report, the certified appraiser accepts responsibility with the trainee for the content of and conclusions of the report. A trainee may assist in the performance of real estate appraisals provided the trainee:

(1) maintains a log on a form prescribed by the board that includes, but is not limited to, each appraisal performed by the trainee, the type of the property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the number of hours claimed, the name of the supervisor for that appraisal, the supervisor's certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject; the log must show all appraisals and related activities performed by the trainee and must be updated and signed by the supervisor at least every 30 days; a trainee can only receive credit for half of the hours claimed within the performed appraisal.

(2) must attend a supervisor/trainee education program approved by the appraisal board either before supervision begins or within 90 days after such supervision begins; if the trainee does not take the class within 90 days after supervision begins, the trainee shall not receive appraisal experience credit for appraisals performed until the class is taken;

(3) must assure that the supervisor has properly completed and sent the declaration form to the appraisal board on or before the day the trainee begins assisting the supervising appraiser;

(4) trainees shall not receive appraisal experience credit for appraisal and related activities performed in violation of Subsection B of 16.62.1.12 NMAC.

~~[C. Board notification of existing supervisor. All certified appraisers who are currently supervising trainees must:~~

~~—— (1) declare with the board the name of each trainee on the declaration form prescribed by the board within 30 days of 06/13/08;~~

~~—— (2) not add any new trainees until they have met requirements of Subsections A and B of this section;~~

~~—— (3) trainees shall not receive appraisal experience credit for appraisal and related activities performed in violation of Subsection C of 16.62.1.12 NMAC.~~

~~—— D. Board notification of existing trainee. Every trainee who is currently being supervised must:~~

~~—— (1) assure that the supervisor has properly completed and sent the supervisor declaration form to the board within 30 days of 06/13/08;~~

~~—— (2) maintain the experience log;~~

per part B1, on the form prescribed by the board effective month/day/year; all logs of appraisals and related activities completed prior to 06/13/08 are valid in accordance with regulations in place at the time they were performed;

(3) if training is not completed by 2009 renewal cycle, trainee must complete the approved supervisor/trainee education program prior to renewal; [16.62.1.12 NMAC - N, 06/13/08; A, 10/16/2009; A, 08/21/2010]

16.62.1.14 APPRAISAL MANAGEMENT COMPANIES: An appraiser may not perform appraisal for an AMC unless that company is registered pursuant to the Appraisal Management Company registration Act 47.14.1 NMSA 1978.

[16.62.1.14 NMAC - N, 08/21/2010]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.2 NMAC Section 8, effective August 21, 2010.

16.62.2.8 APPRENTICE: A holder of an apprentice registration, but not a license or certificate, is authorized to prepare appraisals of all types of real estate or real property, provided such appraisals are not described or referred to as "state licensed" or "state certified" and provided further, the apprentice appraiser does not assume or use any title, designation or abbreviation likely to create the impression that he/she is a state-licensed or state-certified real estate appraiser. Apprentices are not qualified to perform under FIRREA, Title XI. Applicants for apprentice real estate appraisers in the state of New Mexico must:

- A. be a legal resident of the United States;
- B. have reached the age of majority;
- C. prove successful completion of real estate appraisal education of at least 75 board-approved classroom hours; real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principles and procedures in: basic appraisal principles - 30 hours; basic appraisal procedures - 30 hours; and the 15-hour national USPAP course or its equivalent;
- D. courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which

the appraiser's knowledge is increased and none may be taken on-line;

E. demonstrate to the board that he/she is honest, trustworthy and competent;

F. successful completion of a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

G. pay the fees set out in 16.62.12.8 NMAC;

H. submit a duly made application to the board office;

I. declared supervisor.

[1/14/00; 16.62.2.8 NMAC - Rn & A, 16 NMAC 62.2.8, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 08/21/10]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.3 NMAC Section 8, effective August 21, 2010.

16.62.3.8 LICENSE: A holder of a license may appraise complex residential or nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. The holder of a license may not assume or use any title, designation or abbreviation likely to create the impression of certification.

A. For federally related transactions, the licensed real estate appraiser classification applies to the appraisal of non-complex one to four residential units having a transaction value less than \$1,000,000 and complex one to four residential units having a transaction value less than \$250,000.

B. Complex one-to four-family residential property appraisal means one in which the property to be appraised, the form of ownership, or the market conditions are atypical. For non-federally related transaction appraisals, transaction value shall mean market value.

C. All licensed real estate appraisers must comply with the competency rule of the national uniform standards of professional appraisal practice (USPAP).

D. Applicants for licensure in the state of New Mexico must:

- (1) be a legal resident of the United States;
- (2) have reached the age of majority;

[~~(3) prove successful completion prior to November 15, 2007, of 90 classroom hours of board approved real estate appraisal education; real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principle and procedures~~

~~in: basic principles - 30 hours; basic appraisal procedures - 30 hours; the 15-hour national uniform standards of professional appraisal practice (USPAP) course or its equivalent; and a minimum of 15 hours from one or more of the following:~~

~~(a) residential market analysis and highest and best use;~~

~~(b) residential appraiser site valuation and cost approach;~~

~~(c) residential sales comparison and income approaches;~~

~~(d) residential report writing and case studies;~~

~~(4) submit application for acceptance of appraisal courses no later than November 15, 2007; education courses which do not meet the appraiser qualifications board (AQB) criteria effective January 1, 2008 cannot be carried forward after December 31, 2007;]~~

[~~(5) (3) prove [effective January 1, 2008 and thereafter an applicant for licensure, not completing their education requirement prior to December 31, 2007]]~~ successful completion of real estate appraisal education of at least 150 board-approved classroom hours as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following modules (no more than 50% of the courses from courses d. through g. may be from courses offered over

[Continued on page 740]

the internet or distance learning modalities):

(a) basic appraisal principles	30 hours
(b) basic appraisal procedures	30 hours
(c) the 15 hour national USPAP course and examination	15 hours
(d) residential market analysis and highest and best use	15 hours
(e) residential appraiser site valuation and cost approach	15 hours
(f) residential sales comparison and income approaches	30 hours
(g) residential report writing and case studies	15 hours

[(6)] (4) successfully complete the appraiser qualifications board (AQB) approved licensed real estate appraiser examination; there is no alternative to successful completion of the examination; successful completion of the examination is valid for a period of 24 months, and the applicant must meet the requisite experience requirement within 24 months;

[(7)] (5) courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

[(8)] (6) demonstrate to the board that he/she is honest, trustworthy and competent;

[(9)] (7) successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

[(10)] (8) pay the fee set out in 16.62.12.8 NMAC;

[(11)] (9) meet the minimum criteria for state licensure issued by the appraisers qualifications board of the appraisal foundation;

[(12)] (10) submit a duly made application to the board office.

E. Experience: applicants for state licensure must have a minimum of 2,000 hours of experience obtained in no fewer than twelve (12) months in real property appraisal as defined in Part 1, submitted on a form prescribed by the board and attested to by the supervising appraisers under whose supervision the experience was obtained.

[10/1/97; 16.62.3.8 NMAC - Rn & A, 16 NMAC 62.3.8, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 08/21/10]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.4 NMAC Sections 8, effective August 21, 2010.

16.62.4.8

RESIDENTIAL CERTIFICATION: A holder of a residential certificate is eligible to prepare appraisals of all residential real estate for federally related transactions or other uses. He/she may appraise nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. The holder of a residential certificate may not assume or use any title, designation or abbreviation likely to create the impression of general certification.

A. The certified residential real estate appraiser classification qualifies the appraiser to appraise one to four residential units without regard to value or complexity. The classification includes the appraisal of vacant or unimproved land that is utilized for one to four family purposes or for which the highest and best use is for one to four family purposes. The classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

B. All certified residential real estate appraisers must comply with the competency rule of the national uniform standards of professional appraisal practice (USPAP).

C. Applicants for certification in residential appraisal in the state of New Mexico must:

(1) be a legal resident of the United States;

(2) have reached the age of majority;

[(3)] (3) prove successful completion, prior to November 15, 2007 of 120 classroom hours of board approved real estate appraisal education; real estate appraisal programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principles and procedures in: basic appraisal principles - 30 hours; basic appraisal procedures - 30 hours; the 15-hour national uniform standards of professional appraisal practice (USPAP) course or its equivalent; and a minimum of 45 hours from one or more of the following:

_____ (a) residential market analysis and highest best use;

_____ (b) residential appraiser site valuation and cost approach;

_____ (c) residential sales comparison and income approaches;

_____ (d) residential report writing and case studies;

_____ (e) statistics, modeling and finance;

_____ (f) advanced residential applications and case studies;

_____ (g) appraisal subject matter electives;

[(4)] (4) prove successful completion of the appraiser qualifications board (AQB) approved certified residential or certified general real estate appraiser examination; there is no alternative to successful completion of the examination; application for the examination must be made no later than November 15, 2007;

_____ (5) submit application for acceptance of appraisal courses no later than November 15, 2007; education courses which do not meet the appraiser qualifications board (AQB) criteria effective January 1, 2008 cannot be carried forward after December 31, 2007;

[(6)] (3) prove [(effective January 1, 2008 and thereafter an applicant for licensure, not completing their education requirement prior to December 31, 2007)] successful completion of real estate appraisal education of at least 200 board-approved classroom hours as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following modules (no more than 50% of the courses from courses d. through j. may be from courses offered over the internet or distance learning modalities):

(a) basic appraisal principles	30 hours
(b) basic appraisal procedures	30 hours

(c) the 15 hour national USPAP course and examination	15 hours
(d) residential market analysis and highest and best use	15 hours
(e) residential appraiser site valuation and cost approach	15 hours
(f) residential sales comparison and income approaches	30 hours
(g) residential report writing and case studies	15 hours
(h) statistics, modeling and finance	15 hours
(i) advanced residential applications and case studies	15 hours
(j) appraisal subject matter electives	20 hours

~~[(7)](4)~~ hold ~~[(effective January 1, 2008 and thereafter applicants for residential certification not completing their education requirement prior to December 31, 2007)]~~ an associates degree or higher from an accredited college, junior college, community college or university unless the requirements of Paragraph (8) of Subsection D of 16.62.4.8 NMAC are satisfied;

~~[(8)](5)~~ in lieu of the associate degree, an applicant for the residential certification license shall have successfully passed each of the following collegiate subject matter courses from an accredited college, junior college, community college or university:

- (a) English composition;
- (b) principles of economics (micro or macro);
- (c) finance;
- (d) algebra, geometry or higher mathematics;
- (e) statistics;
- (f) ~~[computers, word processing and spreadsheets]~~ computer science course;
- (g) business or real estate law;

~~[(9)](6)~~ total hours of equivalent college courses in lieu of an associates degree; 21 semester credit hours or its equivalent for the residential certified appraiser; if an accredited college or university (accredited by the commission of colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. secretary of education) accepts the college-level examination program (CLEP) examination(s) and issues a transcript for the exam, showing its approval, it will be considered as credit for the college course;

~~[(10)](7)~~ pass examination: the appraiser qualifications board (AQB) approved certified real estate appraiser examination must be successfully completed; there is no alternative to successful completion of the examination; the requisite experience requirement must be met within 24 months, successful completion of the examination is valid for a period of 24 months;

~~[(11)](8)~~ assure courses taken in satisfying the qualifying education requirements are not repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

~~[(12)](9)~~ demonstrate to the board that he/she is honest, trustworthy and competent;

~~[(13)](10)~~ successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

~~[(14)](11)~~ pay the fee set out in 16.62.12.8 NMAC;

~~[(15)](12)~~ meet the minimum criteria for the state residential certificate classification issued by the appraiser qualifications board (AQB) of the appraisal foundation;

~~[(16)](13)~~ submit a duly made application to the board office.

D. Experience: applicants for state residential certification must have a minimum of 2,500 hours of experience in real property appraisal obtained during no fewer than twenty-four (24) months as defined in 16.62.1 NMAC, submitted on a form prescribed by the board and attested to by the supervising appraiser under whose supervision the experience was obtained.

[10/1/97; 16.62.4.8 NMAC - Rn & A, 16 NMAC 62.4.8, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 08/21/10]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.5 NMAC Section 8, effective August 21, 2010.

16.62.5.8 GENERAL CERTIFICATE: A holder of a general certificate may prepare appraisals on all real estate and may indicate that such appraisals are state certified.

A. All certified general real estate appraisers must comply with the competency rule of the national uniform standards of professional practice (USPAP).

B. Applicants for the general certificate in the state of New Mexico must:

- (1) be a legal resident of the United States;
- (2) have reached the age of majority;

~~[(3)]~~ prove successful completion prior to November 15, 2007 of 180 classroom hours of real estate appraisal education; real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principles and procedures in: basic appraisal principles - 30 hours; basic appraisal procedures - 30 hours; the 15 hour national uniform standards of professional appraisal practice (USPAP) course or its equivalent; and a minimum of 105 hours from one or more of the following:

- _____ (a) general appraiser market analysis and highest and best use;
- _____ (b) statistics, modeling and finance;
- _____ (c) general appraiser sales comparison approach;
- _____ (d) general appraiser site valuation and cost approach;
- _____ (e) general appraiser income approach;
- _____ (f) general appraiser report writing and case studies;
- _____ (g) appraisal subject matter electives;

~~[(4)] (3)~~ successful completion of the appraisal qualifications board (AQB) approved general certified real estate appraiser examination is required; there is no alternative to successful completion of the examination~~[- application for the examination must be made no later than November 15, 2007;]~~

~~[(5)]~~ submit application for acceptance of appraisal courses no later than November 15, 2007; education courses which do not meet the appraiser qualifications board (AQB) criteria effective January 1, 2008 cannot be carried forward after December 31, 2007;

~~[(6)] (4)~~ prove ~~[(effective January 1, 2008 and thereafter an applicant for licensure, not completing their education requirement prior to December 31, 2007)]~~ successful completion of real estate appraisal education of at least 300 board-approved classroom hours as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following modules (no more than 50% of the courses from courses d. through j. may be from courses offered over the internet or distance learning modalities):

(a) basic appraisal principles	30 hours
(b) basic appraisal procedures	30 hours
(c) the 15 hour national USPAP course and examination	15 hours
(d) general appraiser market analysis and highest and best use	30 hours
(e) statistics, modeling and finance	15 hours
(f) general appraiser sales comparison approach	30 hours
(g) general appraiser site valuation and cost approach	30 hours
(h) general appraiser income approach	60 hours
(i) general appraiser report writing and case studies	30 hours
(j) appraisal subject matter electives	30 hours

~~[(7)](5)~~ hold ~~[(effective January 1, 2008 and thereafter applicants for general certification not completing their education requirement prior to December 31, 2007)]~~ a bachelors degree or higher from an accredited college, junior college, community college or university unless the requirements of Paragraph (8) of Subsection C of 16.62.5.8 NMAC are satisfied;

~~[(8)](6)~~ in lieu of the bachelors degree, an applicant for the general certification license shall have successfully passed each of the following collegiate subject matter courses from an accredited college, junior college, community college or university:

- (a) English composition;
- (b) micro economics;
- (c) macro economics;
- (d) finance;
- (e) algebra, geometry or higher mathematics;
- (f) statistics;
- (g) ~~[computers, word processing and spreadsheets]~~ computer sciences;
- (h) business or real estate law;
- (i) two elective courses in accounting, geography, ageconomics, business management or real estate;

~~[(9)](7)~~ total hours of equivalent college courses in lieu of an associates degree; 30 semester credit hours or its equivalent for the general certified appraiser; if an accredited college or university (accredited by the commission of colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. secretary of education) accepts the college-level examination program (CLEP) examination(s) and issues a transcript for the exam, showing its approval, it will be considered as credit for the college course;

~~[(10)](8)~~ pass examination: the appraiser qualifications board (AQB) approved certified real estate appraiser examination must be successfully completed; there is no alternative to successful completion of the examination; the requisite experience requirement must be met within 24 months, successful completion of the examination is valid for a period of 24 months;

~~[(11)](9)~~ assure courses taken in satisfying the qualifying education requirements are not repetitive in nature; applicants must demonstrate that their education includes the core courses listed in the criteria for certified general as identified by the appraiser qualifications board (AQB) required core curriculum, with particular emphasis on non-residential properties; residential is defined as "composed of one to four residential units"; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

~~[(12)](10)~~ demonstrate to the board that he/she is honest, trustworthy and competent;

~~[(13)](11)~~ successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

~~[(14)](12)~~ pay the fee set out in 16.62.12.8 NMAC;

~~[(15)](13)~~ meet the minimum criteria for state general certification classification issued by the appraiser qualifications board (AQB) of the appraisal foundation;

~~[(16)](14)~~ submit a duly made application to the board office.

C. Experience: applicants for state general certification must have a minimum of 3,000 hours of experience in real property appraisal obtained during no fewer than thirty (30) months, of which, one thousand five hundred (1,500) hours must be in non-residential appraisal work as defined in Part 1, submitted on a form prescribed by the board and attested to by the duly certified general supervising appraiser under whose supervision the experience was obtained.

[10/1/97; 16.62.5.8 NMAC - Rn & A, 16 NMAC 62.5.8, 09/13/2004; A, 11/25/06; A, 08/21/10]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.6 NMAC Section 8, effective August 21, 2010.

16.62.6.8 EXAMINATION REQUIREMENTS: All candidates for licensure or certification must successfully complete the appraiser qualifications board endorsed uniform state certifications/licensing examination or its equivalent.

A. The examination will be approved by the appraisal qualifications board of the appraisal foundation and will cover standard appraisal concepts.

B. An applicant for licensing or certification will be denied and the results of the examination will be invalidated if: the applicant uses or possesses anything that gives the applicant an advantage other than silent, cordless, non-programmable calculator, HPC 12C or its equivalent; the applicant gives or receives any kind of aid during the examination; or someone other than the applicant takes the test or attempts to take the test for the applicant.

C. All calculator memories must be cleared before the examination. Operating manuals will not be allowed at the testing site.

D. The board will administer an examination on the New Mexico Real Estate Appraisers Act and board rules and regulations which will require a score of 70 percent or more for a passing grade.

E. The applicant must take the examination prescribed by the board ~~[at the time and place noted in the written authorization]~~.

[1/14/00; 16.62.6.8 NMAC - Rn & A, 16 NMAC 62.61.8, 09/13/2004; A, 06/13/08; A, 08/21/10]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.7 NMAC Section 12, effective August 21, 2010.

16.62.7.12 REQUIRED CONTINUING EDUCATION:

A. ~~[Twenty-eight (28)]~~ Thirty-two (32) classroom hours of continuing education in courses approved by the board are required in each two-year renewal period. Four (4) of these hours must be achieved through a board approved renewal update course.

B. Each license holder

is required to submit a list of continuing education courses with each renewal with copies of certificate(s) of successful completion for the continuing education taken. Continuing education requirements are pro-rated at fourteen hours per full year and 1.17 hours for each additional month of the initial licensing period.

C. Effective with the first biennial renewal period and each subsequent renewal, a seven (7) hour class in the national uniform standards of professional appraisal practice update course is required as part of the continuing education requirement. Successful completion includes passing an exam, if required, by the appraiser qualifications board (AQB).

[B-] D. Educational offerings taken by an individual in order to fulfill the class hour requirement for a different classification than his/her current classification may be simultaneously counted towards the continuing education requirement of his/her current classification.

[E-] E. Credit towards the continuing education hour requirements for each appraiser classification may be granted only where the length of the educational offering is at least two (2) hours.

[10/1/97; 16.62.7.12 NMAC - Rn & A, 16 NMAC 62.7.12, 09/13/2004; A, 11/25/06; A, 08/21/10]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.8 NMAC Sections 11, 12 and 13, effective August 21, 2010.

16.62.8.11 ACCEPTABLE CONTINUING EDUCATION:

Courses approved for continuing education credit shall have significant intellectual or practical content and shall deal primarily with matters directly related to appraisal practice or to the ethical obligations of apprentices, licensees and certificate holders. The primary objective of such courses shall be consistent with the board's charge to protect the public and to increase the professional competence of apprentices, licensees and certificate holders. No more than ~~[twenty-one (21)]~~ fourteen (14) of the hours may be from courses offered over the internet or other distance learning modalities.

[3/14/00; 16.62.8.11 NMAC - Rn & A, 16 NMAC 62.8.11, 09/13/2004; A, 11/25/06; A, 08/21/2010]

16.62.8.12 CONTINUING EDUCATION REQUIREMENTS:

~~[Twenty-eight (28) hours]~~ Thirty-two (32) classroom hours of continuing education are required each biennial renewal period.

Continuing education requirements for initial apprentices, licenses or certificates issued for less than two full years are pro-rated as defined in 16.62.7.12 NMAC.

A. Individuals must successfully complete the seven (7) hour national uniform standards of professional appraisal practice (USPAP) update course, or its equivalent as approved by the appraiser qualifications board (AQB). Successful completion includes passing an exam if required by the appraiser qualifications board (AQB).

B. Successful completion of this seven (7) hour course will be required of every apprentice, license and certificate holder as a condition of renewal in each biennial renewal.

[3/14/00; 16.62.8.12 NMAC - Rn & A, 16 NMAC 62.8.12, 09/13/2004; A, 11/25/06; A, 08/21/2010]

16.62.8.13 EDUCATION ADVISORY COMMITTEE:

The board will appoint an education advisory committee for the purpose of reviewing courses and sponsors of education. The committee will make recommendations to the board as to its findings.

A. A committee recommendation of approval shall go into effect immediately upon the committee's decision and shall not be subject to reversal by the board ~~[except after notification of all parties and a full board review of the request]~~.

B. A committee recommendation of disapproval shall not go into effect until the board has reviewed the committee's finding.

[3/14/00; 16.62.8.13 NMAC - Rn, 16 NMAC 62.8.13, 09/13/2004; A, 08/21/2010]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.10 NMAC Section 8, effective August 21, 2010.

16.62.10.8 TEMPORARY PRACTICE PERMITS:

A. All persons who engage in the business of, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of, or act as, a state real estate appraiser must have a board license or permit.

B. A temporary permit may be issued to non-resident appraiser licensed and certified appraiser for the purpose of performing an appraisal or an appraisal review.

C. Applicants shall submit the following on a board approved form:

(1) verification of license history and good standing as obtained from the national registry of real estate appraisers;

(2) the classification of the license or certification they hold;

(3) whether they are subject to disciplinary action in the state in which they are licensed or certified;

(4) a statement certifying that the applicant's business in New Mexico is temporary and will not exceed 180 days;

(5) a statement identifying the specific assignment to which the temporary license will apply;

(6) an irrevocable statement consenting that suits and actions may be commenced against him/her in the proper court of any county of New Mexico arising from the applicant's actions as a state licensed or certified appraiser; and

(7) the fee specified in 16.62.12 NMAC;

(8) the board may obtain verification and certification from ASC website;

(9) temporary permit extension may be obtained upon the written request submitted to the board office by the temporary permit holder, a 30-day extension will be granted to the established expiration date to complete the specified assignment.

D. In appraisal review of a New Mexico real property, the reviewing appraiser must have a New Mexico residential certification or general certification from the state of New Mexico.

(1) In the case of a temporary practice permit for that one assignment, the temporary permit must be a residential certification or general certification that is the same or greater certification than that of the original appraiser of the appraisal.

(2) In the case of a review appraiser with on opinion of value, the review appraiser must have geographic competency and USPAP compliance with this competency in the report.

[3/15/00; 16.62.10.8 NMAC - Rn, 16 NMAC 62.10.8, 09/13/2004; A, 11/25/06; A, 10/16/09; A, 08/21/10]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.12 NMAC Section 8, effective August 21, 2010.

16.62.12.8 FEES: All fees required under the Real Estate Appraiser Act or these regulations are non-refundable unless otherwise noted.

A. Application fee for apprenticeship is [~~\$165~~] \$200, which includes the initial apprenticeship period.

B. Application fee for a license is [~~\$165~~] \$300, which includes the initial licensing period.

C. Application fee for residential certification is [~~\$165~~] \$300, which includes the initial licensing period.

D. Application fee for general certification is [~~\$165~~] \$400, which includes the initial licensing period.

E. The fee for all examinations will be paid directly to the company who provides the exam.

F. The biennial renewal fee for apprentice appraisers is [~~\$110~~] \$200. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$55 per year or portion of a year. Any renewal issued for less than six months will be charged \$30.

G. The biennial renewal fee for licensed appraisers is [~~\$220~~] \$300. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$110 per year or portion of a year. Any renewal issued for less than six months will be charged \$55.

H. The biennial renewal fee for residential certified appraisers is [~~\$220~~] \$300. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$110 per year or portion of a year. Any renewal issued for less than six months will be charged \$55.

I. The biennial renewal fee for general certified appraisers is [~~\$305~~] \$355. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$155 per year or portion of a year. Any renewal issued for less than six months will be charged \$80.

J. The fee for listing on the federal registry is \$50 per biennial renewal.

K. The application fee for a temporary practice certificate is [~~\$100~~] \$200.

L. The fee for replacement of apprentice, license or certificate is [~~\$25~~] \$50.

M. The fee for a certificate of good standing is \$25.

N. Administrative reinstatement fee is \$200.

O. Administrative fees as follows:

(1) approved continuing education course is \$25;

(2) duplicate is \$25;

(3) list is [~~\$75~~] \$150;

(4) verification is \$25;

(5) miscellaneous is \$25 up to a max of \$100.

[2/29/96; 16.62.12.8 NMAC - Rn, 16 NMAC 62.12.8, 09/13/2004; A, 08/21/2010]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2010

Volume XXI	Submittal Deadline	Publication Date
Issue Number 1	January 4	January 15
Issue Number 2	January 19	January 29
Issue Number 3	February 1	February 12
Issue Number 4	February 15	February 26
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
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Issue Number 15	August 2	August 16
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Issue Number 17	September 1	September 15
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Issue Number 20	October 18	October 29
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Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30

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