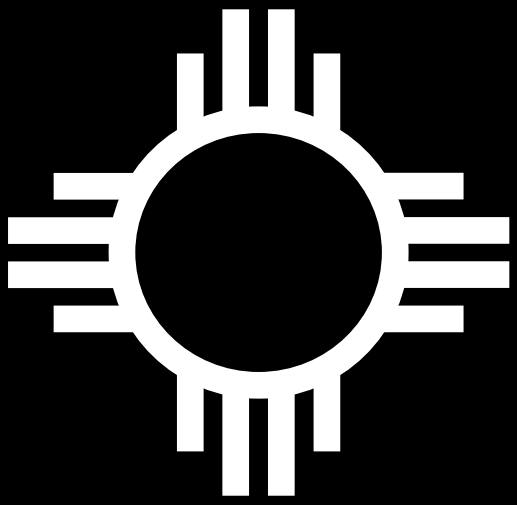
NEW MEXICO REGISTER



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New Mexico Register

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

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

New Mexico Register

Volume XXI, Number 20
October 29, 2010

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Effective Date and Validity of Rule Filings

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

A=***Amended***, E=***Emergency***, N=***New***, R=***Repealed***, Rn=***Renumbered***

Other Material Related to Administrative Law

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Notices of Rulemaking and Proposed Rules

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

NOTICE OF RULEMAKING

Michael Spanier, the Secretary of the New Mexico Aging and Long-Term Services Department ["ALTSD"], is proposing the promulgation of new regulations pursuant to his authority under the Aging and Long-Term Services Department Act, [9-23-1 NMSA 1978] Section 9-23-6. The ALTSD Long-Term Care Ombudsman Program shall hold a formal public hearing on December 3, 2010 from 10:00 a.m. to 12:00 p.m. in the Gila Room on the 2nd floor of the Toney Anaya Building located at 2550 Cerrillos Road, Santa Fe, New Mexico 87505 to receive public comments regarding the proposed promulgation of rule 9.2.19 NMAC governing Long-Term Care Ombudsman. The new proposed rule shall amend the 9.2.19 NMAC filed by the ALTSD predecessor agency, the New Mexico State Agency on Aging, with the State Records Center, 9.2.19 NMAC, Long-Term Care Ombudsman, [9.2.19-N, 2/1/2001]. The primary amendments to the proposed rule include, but are not limited to, adding new titles to certain sections and clarifying the responsibilities of the State Ombudsman regarding the notification of the State Unit Director about public comment or testimony deemed appropriate by the State Ombudsman.

The proposed rule, 9.2.19 NMAC, may be viewed on the ALTSD website, http://www.nmaging.state.nm.us/, or a copy may be obtained by contacting Sondra Everhart, at 505-4746-4790. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on December 10, 2010. Written comments shall be given the same consideration as oral testimony received at the hearing. Written comments should be addressed to Sondra Everhart, State Ombudsman, Aging and Long-Term Services Department, 2550 Cerrillos Road, Santa Fe, New Mexico 87505, Fax Number 505-476-4836, email: sondra.everhart@state.nm.us.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Sondra Everhart, at 505-476-4790. The Aging and Long-Term Services Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
NOTICE OF HEARING

On December 8, 2010, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM. The hearing will address:

Proposal to adopt amendments to 20.11.61 NMAC, *Prevention of Significant Deterioration;* 20.11.42 NMAC, *Operating Permits*; and 20.11.1 NMAC, *General Provisions*. The amendments to 20.11.42 NMAC are proposed as a revision to the Title V Operating Permit Program, and the amendments to 20.11.61 NMAC and 20.11.1 NMAC are proposed as a revision to the New Mexico State Implementation Plan for air quality (SIP). The proposed amendments are required pursuant to the *Prevention of Significant Deterioration* (PSD) *& Title V Greenhouse Gas* (GHG) *Tailoring Rule* [FR 6/3/10, Vol. 75, No. 106, 31514-31608], which "tailors" permitting requirements to ensure only the largest sources of GHG-facilities must obtain air permits for GHGs. Potential sources in Bernalillo County include power plants, refineries, cement manufacturing, etc... In addition, language found at 20.11.42.12.A.(2) NMAC, *Timely Application,* has been streamlined to conform to 40 CFR 70.5, *Permit Applications*, and 20.2.70 NMAC, *Operating Permits* (State of New Mexico).

The Clean Air Act (CAA) PSD and Title V permitting thresholds (triggers) for criteria pollutants (lead, sulfur dioxide, nitrogen dioxide, carbon monoxide, ozone and particulate matter) are 100 and 250 tons per year (tpy) respectively, depending upon the type of emissions. Although these thresholds are appropriate triggers for criteria pollutant permits, they are too low for an effective permit trigger for GHG emissions because GHGs are emitted in significantly greater volumes (i.e. 75,000-100,000 tpy).

Under existing federal law, unless states and local agencies adopt the Tailoring Rule amendments by January 2, 2011, stationary sources that emit as little as 100 or 250 tpy of GHGs will automatically trigger (require) complex new Title V permits or PSD permits (that require best available control technology or "BACT"). This could potentially affect many sources within Bernalillo County, including sources that otherwise would only be required to obtain minor source permits (e.g., 20.11.41 NMAC, *Authority-to-Construct*) or possibly no permit at all.

Step 1 of the Tailoring Rule (1/2/11-6/30/11): PSD permits: no new Tailoring Rule permitting actions will be triggered based solely on GHG emissions. Only sources taking permitting actions "anyway" for other pollutants must also address GHGs under the Tailoring Rule; the "anyway" sources will be subject to PSD requirements only if the sources increase GHG emissions by 75,000 tpy CO_2e or more. Title V permits: Only sources that have already have Title V permits, or that must obtain a new Title V permit for non-GHG pollutants must address GHGs in Step 1.

Step 2 of the Tailoring Rule (7/1/11-6/30/13): PSD permits: GHG sources that emit or have potential to emit at least 100,000 tpy CO_2e will be subject to PSD requirements. If a physical change or a change in the method of operation at a 100,000 tpy $C0_2e$ source will result in a net GHG increase by at least 75,000 tpy CO_2e, the source also will be subject to PSD permitting. Title V permits: Sources subject to GHG permitting under Step 1 will continue to be subject to GHG permitting requirements under Step 2. GHG sources that emit or have potential to emit at least 100,000 tpy CO_2e will be subject to Title V requirements.

Step 3, PSD and Title V: In the Tailoring Rule, EPA commits to complete another rulemaking by 7/1/12, after soliciting comment on streamlining and exclusion of certain sources. Step 3 will not require permitting of sources with GHG emissions less than 50,000 tpy CO_2e before 4/30/16.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the aforementioned proposals. Meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances,

Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC, *Rulemaking Procedures -- Air Quality Control Board*.

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent to testify (NOI) before 5:00pm on November 23, 2010, to: Attn: Hearing Clerk, Ms. Janice Wright, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Suite 3023, 3rd Floor, One Civic Plaza (400 Marquette Avenue NW). The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; 3. summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; 4. include the text of any recommended modifications to the proposed regulatory change; and 5. list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

In addition, written comments to be incorporated into the public record for this hearing should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on December 1, 2010. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to jcwright@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department office, or by contacting Ms. Janice Wright electronically at jcwright@cabq.gov or by phone (505) 768-2601, or by downloading a copy from the City of Albuquerque Air Quality Division website http://www.cabq.gov/airquality/aqcb/public-review-drafts .

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

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The hearing will address: Proposal to adopt amendments to 20.11.2 NMAC, *Fees* and to incorporate an amended 20.11.2 NMAC into the New Mexico State Implementation Plan (SIP) for air quality. Proposed amendments to 20.11.2 NMAC, *Fees* constitute increases to some fees, regular annual adjustments consistent with the Consumer Price Index (CPI), and some language changes for the following reasons:

1. Federal and New Mexico laws require or authorize, depending on the type of permit, collection of fees to cover specific costs. Current fees are insufficient and resulted in a projected budget deficit in FY/10 and will result in yet another budget deficit in FY/11 if unchanged.
2. Fee fund balance has covered program cost deficits in past years, but the fund balance is now depleted.
3. The scope and objectives sections of the current fee regulation require updating and revision to be consistent with the New Mexico Air Quality Control Act.
4. Some current fees are based on theoretical maximum emissions rather than the maximum requested by the applicant. The proposed fees will be charged only for what industry requests on a permit application, which could substantially reduce costs.
5. Programs have increased in both volume and complexity.
6. Personnel and operating costs have increased steadily since the current fee structures were put in place between 1997 and 2004.
7. To date, fees have not been adjusted for CPI increases, although such adjustments are authorized. CPI adjustments will be applied going forward in the proposed regulation.
8. Refund and appeal processes need clarification.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the aforementioned proposals. Meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC, *Rulemaking Procedures -- Air Quality Control Board*.

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NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on Wednesday, December 1, 2010 at 9:00 a.m. in the ASD conference room of Plaza San Miguel, 729 St. Michael's Drive, Santa Fe.

The subject of the hearing is Client Medical Transportation Services and Transportation Services. The Human Services Department, Medical Assistance Division, is proposing amendments to rules 8.301.6 NMAC, *Client Medical Transportation Services*, and 8.324.7 NMAC, *Transportation Services*, to clarify regulatory language, to ensure accuracy with existing rules, and respond to current budgetary constraints.

If implemented as proposed, the following changes to Medicaid transportation benefit coverage will affect recipients by:

* Eliminating reimbursement for lodging and meals for both eligible recipients and their attendants.
* Allowing reimbursement for attendant travel only if the eligible recipient is a child ten years of age or younger.
* Providing more detail on non-emergency transportation services to help recipients and providers fully understand allowable transportation services.
* Requiring providers to inform recipients (1) that the provider is enrolled in Medicaid, and (2) whether the services they propose to render are MAD approved services.
* Adding language informing eligible recipients who are enrolled in a managed care organization (MCO) they must utilize their respective MCO's transportation benefits.

If implemented as proposed, the following changes to Medicaid transportation benefits will affect transportation providers by:

* Replacing various modes of transportation with more updated references, such as changing 'public transportation' to 'long distance common carriers'.
* Rewording prior authorization and utilization review for clarity.
* Removing reporting requirements for providers if transporting eligible recipients over 5 million miles a year.

Other changes in the rule being proposed at this time include the following:

* Replacing outdated word usage, such as Medicaid with MAD, the Medical Assistance Division.
* Updating the Department's mission statement.
* Providing more instruction on the eligibility of providers and their responsibilities.
* Directing providers to enroll and follow a MAD managed care or MAD fee-for-service coordinated care contractor's instructions for billing and authorization of services.
* Adding wording that payment is made only by electronic funds transfer (EFT).

The changes in the transportation benefits are being proposed because the Department believes the changes are more in line with the benefits typically available from other commercial insurers. Also, at this time there is a serious shortfall in state revenues which has resulted in reductions in many state agency budgets. The New Mexico Medicaid program budget is no exception. Program costs are outpacing available revenues. Therefore, the Department has looked at transportation and other program benefits to determine changes that can be made while still providing medically appropriate services.

Interested persons may submit written comments no later than 5:00 p.m., December 1, 2010, to Kathryn Falls, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Copies of the Human Services Register and their proposed rules are available for review on our Website at www.hsd.state.nm.us/mad/registers/2010 or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO ORGANIC COMMODITY COMMISSION

Notice of Rulemaking

The New Mexico Organic Commodity Commission (NMOCC) will consider changes to its rules promulgated under the Organic Commodity Act. Changes are proposed for the following Rules:

21.15.1.11 NMAC Fees and Assessments

Copies of the draft rules are available for inspection at the NMOCC office, 4001 Indian School NE, Suite 310, Albuquerque, NM, during normal business hours. Hard copies of the draft rules are available upon request. Written comments, inquiries or requests for copies should be directed to the NMOCC, 4001 Indian School NE, Suite 310, Albuquerque, NM, 87110, (505) 841-9067. Written comments or requests for copies may be submitted electronically to: joan.quinn@state.nm.us. To be considered, written comments, arguments, views or relevant data should be submitted by 5:00 p.m. December 1, 2010. The Commission will review and consider all written comments addressing the proposed rule changes.

A formal rulemaking hearing will be held on December 6, 2010 at 10:00 a.m. in the classroom at the Bernalillo County Cooperative Extension Office, 1510 Menaul NW, Albuquerque, New Mexico. Oral comments will be taken at the public hearing. All interested parties are requested to attend. Lobbyists must comply with the Lobbyist Regulation Act, NMSA 1978, Section 2-11-1 et. seq. (1997), which applies to rulemaking proceedings. Final action on the rules will occur at a public meeting of the Commission, also on December 6, 2010, immediately following the rulemaking hearing.

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 Joan Quinn at joan.quinn@state.nm.us at least one (1) week prior to the hearing or as soon as possible. Public

documents can be provided in various accessible formats. Please contact Joan Quinn at joan.quinn@state.nm.us if a summary or other type of accessible format is needed.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, November 16, 2010, at 9:30 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1209 Camino Carlos Rey, Santa Fe, NM. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by November 8, 2010. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

Amendments

1.15.4 NMAC	GRRDS, General Financial
1.15.5 NMAC	GRRDS, General Financial Schedule (Interpretive)
1.17.220 NMAC	JRRDS, Administrative Office of the Courts
1.18.665 NMAC	ERRDS, Department of Health

Repeal

1.18.601 NMAC	ERRDS, Commission on the Status of Women

New-Replacement

1.18.601 NMAC	ERRDS, Commission on the Status of Women

New

1.18.647 NMAC	ERRDS, Developmental Disabilities Planning Council

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 rules:

Gross Receipts and Compensating Tax Act
3.2.20.13 NMAC Section 7-9-3.2 NMSA 1978
(Reporting, Filing or Registration Fees)
3.2.20.19 NMAC Section 7-9-3.2 NMSA 1978
(Receipts from Services - Recreational, Entertainment and Athletic Services)
3.2.20.32 NMAC Section 7-9-3.2 NMSA 1978
(Fines)
3.2.100.9 NMAC Section 7-9-12 NMSA 1978
(Exemptions from Gross Receipts)
3.2.101.9 NMAC Section 7-9-13 NMSA 1978
(Receipts of Governmental Entities)
3.2.101.10 NMAC Section 7-9-13 NMSA 1978
(American National Red Cross)
3.2.102.8 NMAC Section 7-9-14 NMSA 1978
(Use of Property by Governmental Entities)
3.2.102.11 NMAC Section 7-9-14 NMSA 1978
(American National Red Cross)
3.2.105.8 NMAC Section 7-9-17 NMSA 1978
(Blind Operators of Vending Stands)
3.2.107.8 NMAC Section 7-9-19 NMSA 1978
(Receipts from Feeding Animals)
3.2.109.11 NMAC Section 7-9-22 NMSA 1978
(Manufactured Homes)
3.2.113.9 NMAC Section 7-9-25 NMSA 1978
(Pawnbrokers)
3.2.114.8 NMAC Section 7-9-26 NMSA 1978
(Refund of Tax)

The New Mexico Taxation and Revenue Department proposes to repeal the following rules:

Tax Administration Act
3.1.6.9 NMAC Section 7-1-17 NMSA 1978
(Taxes Less Than $10.00)

Income Tax Act
3.3.12.14 NMAC Section 7-2-12 NMSA 1978
(Composite Returns for Owners of Pass-Through Entities)

These proposals were placed on file in the Office of the Secretary on October 15, 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 December 30, 2010.

A public hearing will be held on these proposals on Tuesday, December 7, 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 December 7, 2010.

3.2.20.13 **R E P O R T I N G , FILING OR REGISTRATION FEES**

A. Whenever a person is required by law to report to or register with a governmental agency or to register possession or use of tangible personal property, receipts of an agency, institution, instrumentality or political subdivision of the state of New Mexico from such registrations are not governmental gross receipts, regardless of whether tangible personal property is given to the person registering as evidence of the registration.

B. Example 1: The owner or operator of a facility in which a hazardous chemical is present in certain quantities is required to file an inventory report on such chemicals. A fee is charged for each inventory form filed. Receipts from such fees are not governmental gross receipts.

C. Example 2: The New Mexico owner of a motor vehicle which

is to be driven upon the public highways is obliged to register the vehicle with the taxation and revenue department. A metal plate, to be affixed to the motor vehicle, is given to the owner upon registration as evidence of the registration. The transaction is not primarily the sale of tangible personal property but the registration of the motor vehicle. Receipts from such registrations are not governmental gross receipts.

D. Fees charged by any agency, institution, instrumentality or political subdivision of the state of New Mexico as a pre-condition for official action by that entity are not receipts from a taxable activity.

E. Example 1: Docketing fees are charged by New Mexico courts to defray the administrative costs of accepting a case. Cases will not be accepted in absence of payment of the fee. Such fees are not governmental gross receipts.

F. Example 2: The state public regulation commission charges fees for incorporating a corporation and will not recognize the corporation unless the fees are paid. Such fees are not governmental gross receipts.

[~~G. Example 3: The taxation and revenue department charges a fee of $100 for granting permission to a taxpayer to apply for nontaxable transaction certificates. Such fees are not governmental gross receipts.~~]

[6/28/91, 10/2/92, 11/15/96; 3.2.20.13 NMAC - Rn, 3 NMAC 2.100.13 & A, 4/30/01; A, XXX]

3.2.20.19 **RECEIPTS FROM SERVICES - RECREATIONAL, ENTERTAINMENT AND ATHLETIC SERVICES**

A. Receipts of any agency, institution, instrumentality or political subdivision of the state of New Mexico from performing services which are entirely or predominantly recreational, entertainment or athletic services in facilities which are open to the general public are governmental gross receipts and are subject to the governmental gross receipts tax.

B. Example: A public university sells season tickets to the games of its basketball team. The price of the season ticket includes use of a parking space in a parking lot near the place where the games are played. All receipts from the sale of the season tickets, including any receipts that might otherwise be attributable to the value of right to use the parking space, are governmental gross receipts.

C. Admissions fees to a recreational, entertainment or athletic facility open to the general public or to a recreational, entertainment or athletic event in a facility open to the general public are governmental gross receipts.

D. Example 1: Municipality X maintains a museum. An admissions fee of $2 is charged for admission to the museum, except that no fee is charged to school classes or accompanying adults. Receipts from the admissions fees collected are governmental gross receipts.

E. Example 2: A state agency maintains parks. It charges campers an admissions fee which also permits the use of a camping spot (whether designated or not). Receipts from the admissions fees collected are governmental gross receipts.

F. Student activity fees received by a state university, college or school are governmental gross receipts to the extent that the fees permit attendance at recreational, entertainment or athletic events in facilities open to the general public. When the portion of the student activity fees permitting attendance at recreational, entertainment or athletic events in facilities open to the general public is not readily determinable, reasonable methods may be used to estimate that portion, including the following.

(1) Reserved seats method. If a specific number of seats or places are reserved for students at the event, governmental gross receipts is estimated by multiplying the number of reserved seats or places times the amount of the lowest price ticket available to the general public.

(2) Face value method. When the student activity fee permits attendance of a student at an event at a reduced price (but not free), the governmental gross receipts from the sale of a discounted ticket is the cash received plus the amount of the discount, i.e., the face value of the ticket.

(3) Budget method. When the student activity fees are commingled with other revenue sources and the total is used to carry on several activities, including at least one taxable activity such as a program of athletic contests in facilities open to the general public, the portion of the student activity fees which are governmental gross receipts is estimated by multiplying the total amount of student activity fees by a fraction, the numerator of which is the amount budgeted for taxable activities and events and the denominator of which is the total amount of commingled funds budgeted for all activities and events.

(4) Any other method agreed to by the secretary or the secretary's delegate.

G. Fees received by a municipality for providing a swimming instruction program are not governmental gross receipts. Teaching someone to swim is an educational service and not a recreational, athletic or entertainment service. Fees for permitting individuals to use pool facilities or to swim are receipts from admissions to a recreational, athletic or entertainment event and are governmental gross receipts. See Paragraph (2) of Subsection A of 3.2.20.7 NMAC regarding admissions.

[6/28/91, 11/15/96; 3.2.20.19 NMAC - Rn, 3 NMAC 2.100.19, 4/30/01; A, XXX]

3.2.20.32 **FINES**

A. Receipts from the imposition of criminal or civil fines or forfeitures are not receipts from a taxable activity and are not governmental gross receipts.

B. Example 1: The taxation and revenue department charges penalty (at 2% per month, or portion thereof, up to a maximum of [~~10%~~] 20%) for late payment of taxes. A $5 minimum penalty applies even when no tax is due if a report due is late. The penalties collected are not governmental gross receipts.

C. Example 2: A governmentally-operated library charges a fine for late return of borrowed materials. Such fines are not governmental gross receipts.

D. Example 3: Police agencies under some laws are entitled to seize certain tangible personal property if the property is connected with certain unlawful behavior. The value of such property when seized is "receipts" but is not reportable as governmental gross receipts. If the agency sells the property from a facility open to the general public or to another part of the state, however, receipts from that sale are governmental gross receipts. [9/17/91, 10/2/92, 11/15/96; 3.2.20.32 NMAC - Rn, 3 NMAC 2.100.32, 4/30/01; A, XXX]

3.2.100.9 **EXEMPTIONS FROM GROSS RECEIPTS**: The exemptions provided [~~by Sections 7-9-13 through 7-9-42 NMSA 1978~~] in the Gross Receipts and Compensating Tax Act apply only to those receipts which are included in and defined as gross receipts pursuant to Section [~~7-9-3~~] 7-9-3.5 NMSA 1978.

[10/21/86, 11/26/90, 11/15/96; 3.2.100.9 NMAC - Rn, 3 NMAC 2.12.9 & A, 5/15/01; A, XXX]

3.2.101.9 **RECEIPTS OF GOVERNMENTAL ENTITIES**:

A. Except for the receipts from the sale of gas or electricity by a utility owned or operated by a political subdivision of the state and receipts of a municipality from the ownership or operation of a cable television station owned by the municipality, the receipts of the United States or any agency or instrumentality of the United States, the state of New Mexico or any political subdivision of the state or any Indian nation, tribe or pueblo from activities or transactions occurring on its sovereign territory are exempt from the gross receipts tax. This exemption applies to the receipts of such governmental entity from the sale,

[~~or lease~~] leasing or licensing of property, granting a franchise or from the sale of a service by that governmental entity. This exemption, however, does not apply to the imposition of the governmental gross receipts tax under the provisions of Section [~~7-9-4.1~~] 7-9-4.3 NMSA 1978.

B. Example 1: A New Mexico municipality publishes and sells to the public a compilation of all its municipal ordinances. The receipts from these sales are not subject to the gross receipts tax but the receipts will be subject to the governmental gross receipts tax.

C. Example 2: X Sporting Goods Store sells a hunting license for $7.50. Of this $7.50, X remits $7.25 to the state of New Mexico and $0.25 is retained by X as a commission. The $7.25 that is remitted to the state is exempt from the gross receipts tax. However, the $0.25 retained by X is subject to the gross receipts tax. This amount is not deductible under Section 7-9-66 NMSA 1978 because a license is not tangible personal property under Section 7-9-3 NMSA 1978. The $0.25 is a receipt derived from services performed in New Mexico.

D. Example 3: M Utility Company obtains a franchise from a New Mexico municipality to operate an electric utility. The receipts the municipality obtains from M for granting of this franchise are exempt from the gross receipts tax.

E. Example 4: The university of New Mexico sells copies of transcripts to students. These receipts are not subject to the gross receipts tax because the university of New Mexico is the state of New Mexico. Provided that the conditions set forth in [~~Section~~] 3.2.20.21 NMAC are met, the receipts from selling the transcript copies are not governmental gross receipts.

F. Example 5: The receipts of a public housing authority which is an agency either of the state of New Mexico or any political subdivision thereof or of the United States or any agency or instrumentality thereof are exempted from the gross receipts tax to the extent provided in Section 7-9-13 NMSA 1978. The receipts of the public housing authority from the sale of tangible personal property from a facility open to the general public or providing refuse collection, [~~refusal~~] refuse disposal or [~~sewerage~~] sewage services are governmental gross receipts subject to the governmental gross receipts tax; its receipts in the form of rentals are not governmental gross receipts.

G. Example 6: The receipts of concessionaires who are not agencies or instrumentalities of the federal government or the state of New Mexico or any political subdivision of the state from carrying on activities within a federal area are subject to the gross receipts tax.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/17/91, 3/19/92, 10/28/94, 11/15/96, 1/15/98; 3.2.101.9 NMAC - Rn, 3 NMAC 2.13.9 & A, 5/15/01; A, XXX]

3.2.101.10 **AMERICAN NATIONAL RED CROSS**: The American national red cross chartered pursuant to [~~36 U.S.C. 1~~] 36 U.S.C. 300101 et seq. is immune from state taxation as an instrumentality of the federal government. As such, its receipts are exempt from gross receipts tax under Section 7-9-13 NMSA 1978.

[5/31/97; 3.2.101.10 NMAC - Rn, 3 NMAC 2.13.10 & A, 5/15/01; A, XXX]

3.2.102.8 **USE OF PROPERTY BY GOVERNMENTAL ENTITIES**:

A. For purposes of Section 7-9-14 NMSA 1978, the phrase "United States [~~or any agency or instrumentality thereof~~]" does not include individual states or any agency, department, instrumentality or political subdivision of an individual state. The phrase "the state of New Mexico" includes any agency, institution of higher education, board, commission or department which has been created by statute, executive order or action of the legislature and which has been charged with the administration or enforcement of certain provisions of New Mexico statutes. The phrase "or any political subdivision thereof" includes incorporated municipalities, counties, school districts, conservation districts or other entities authorized by statute and which are governed by representatives elected by the public. The use of property in New Mexico by the United States or any of its agencies, departments or instrumentalities is exempt from compensating tax. Except for tangible personal property incorporated into a metropolitan redevelopment project or into a construction project, the use of property in New Mexico by [~~the United States or any agency or instrumentality of the United States or by~~] the state of New Mexico or any of its agencies, departments, instrumentalities or political subdivisions is exempt from compensating tax.

B The following examples illustrate the application of Section 7-9-14 NMSA 1978:

(1) Example 1: The air force purchases [~~an F-111~~] a fighter jet for use at an air force base in New Mexico. The use of this plane in New Mexico by the United States is exempt from the compensating tax.

(2) Example 2: Z, a soil and water conservation district created pursuant to the Soil and Water Conservation District Act, buys equipment and trees for its use in controlling erosion. Because Z is a political subdivision of New Mexico, its use of the equipment and trees are not subject to the compensating tax.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 3/16/95, 11/15/96; 3.2.102.8 NMAC - Rn, 3 NMAC 2.14.8 & A, 5/15/01; A, XXX]

3.2.102.11 **AMERICAN NATIONAL RED CROSS**: The American national red cross chartered pursuant to [~~36 U.S.C. 1~~] 36 U.S.C. 300101 et seq. is immune from state taxation as an instrumentality of the federal government. As such, its use of property in New Mexico is exempt from compensating tax under Section 7-9-14 NMSA 1978.

[5/31/97; 3.2.102.11 NMAC - Rn, 3 NMAC 2.14.11 & A, 5/15/01; A, XXX]

3.2.105.8 **BLIND OPERATORS OF VENDING STANDS**:

A. Except as provided in Subsection B of this section, receipts of blind operators of vending stands established in business pursuant to the Vending Stands for Blind in Federal Buildings Act, 20 U.S.C. Sections 107-107(f), [~~(1964), 49 Stat. 1559 (1936) Amend., 68 Stat. 663 (1954)~~] or Sections 22-14-24 to 22-14-29 NMSA 1978 are subject to the gross receipts tax.

[~~B.~~] Such operators are not employees within the indicia outlined in [~~Section~~] 3.2.105.7 NMAC.

B. The receipts of a blind "disabled street vendor" are exempt under Section 7-9-41.3 NMSA 1978.

[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.105.8 NMAC - Rn, 3 NMAC 2.17.8 & A, 5/15/01; A, XXX]

3.2.107.8 **RECEIPTS FROM FEEDING ANIMALS**:

A. Only the receipts from feeding, pasturing, penning or handling livestock are exempt under Section 7-9-19 NMSA 1978. The receipts from feeding, pasturing, penning or handling any animals which are not livestock are subject to the gross receipts tax.

B. [~~Receipts from the training of livestock are exempt under Section 7-9-19 NMSA 1978 except for the period July 1, 1991 through June 30, 1992. During the period July 1, 1991 through June 30, 1992 only, receipts from training of any animals, whether or not those animals are livestock, are not exempt from the gross receipts tax under the provisions of Section 7-9-19 NMSA 1978.~~

~~C.~~] The following examples illustrate the application of Section 7-9-19 NMSA 1978.

(1) Example 1: A owns 1,000 sheep. A pastures them with B, who owns a ranch, for fifteen cents ($0.15) per head per month. The receipts which B receives are exempt from the gross receipts tax.

(2) Example 2: V, a veterinarian, maintains facilities for boarding animals. V boards cats and dogs that are under veterinary care. V's receipts from these services are not exempt under Section 7-9-19 NMSA 1978 because the cats and dogs are not livestock.
[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 4/30/99; 3.2.107.8 NMAC - Rn, 3 NMAC 2.19.8 & A, 5/15/01; A, XXX]

3.2.109.11 **MANUFACTURED HOMES**: Receipts from selling manufactured homes are subject to the gross receipts tax. [~~A manufactured home is a house trailer which exceeds either a width of eight feet or a length of forty feet when equipped for the road.~~] Manufactured homes are exempted from the motor vehicle excise tax by Section 7-14-3 NMSA 1978.
[7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.109.11 NMAC - Rn, 3 NMAC 2.22.1.11, 3/14/01; A, XXX]

3.2.113.9 **PAWNBROKERS**: Receipts of a [~~corporation engaged in pawnbroking~~] person from engaging in pawn transactions, as that term is defined in Section 56-12-2 NMSA 1978, which are received as interest upon money loaned are exempt from the gross receipts tax pursuant to Section 7-9-25 NMSA 1978.
[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.113.9 NMAC - Rn, 3 NMAC 2.25.9 & A, 5/15/01; A, XXX]

3.2.114.8 **REFUND OF TAX**: When a refund of tax imposed by Sections 7-13-3 and [~~7-16A-2.~~1] 7-16A-3 NMSA 1978 is given the purchaser under Sections 7-13-17 or 7-16A-13.1 NMSA 1978, the compensating tax will be deducted from such refund and no gross receipts tax will be charged at the time of sale of the product. The reasonable value of gasoline or special fuel for compensating tax purposes will be the price paid for the fuel, including any applicable excise taxes whether separately stated or included in the price. This version of [~~Section~~] 3.2.114.8 NMAC applies to transactions on or after July 1, 1998.
[12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.114.8 NMAC - Rn, 3 NMAC 2.26.8 & A, 10/31/00; A, 10/15/02; A, XXX]

3.1.6.9 [~~**TAXES LESS THAN $10.00:** The secretary or secretary's delegate shall not assess taxpayers for taxes due aggregating less than $10.00, except that assessments shall be issued for the minimum $5.00 penalty for late-filed reports under Section 7-1-69 NMSA 1978.~~] [RESERVED]
[11/5/85, 8/15/90, 10/31/96; 3.1.6.1 NMAC - Rn & A, 3 NMAC 1.6.1, 1/15/01; Repealed, XXX]

3.3.12.14 [~~**COMPOSITE RETURNS FOR OWNERS OF PASS-THROUGH ENTITIES**~~

~~A. For the purposes of 3.3.12.14 NMAC:~~

~~(1) "authorized representative" means any of the qualifying owners, the entity the qualified owner is an owner of or the entity's or the qualifying owners' contractor or agent authorized to file composite returns for the qualified owners;~~

~~(2) "entity" means a partnership which has not elected to be taxed for federal income tax purposes as a corporation, a limited liability company which is not taxed as a corporation for federal income tax purposes or an S corporation;~~

~~(3) "owner" means an individual who is a partner in a partnership which has not elected to be taxed for federal income tax purposes as a corporation, a shareholder in an S corporation or a member of a limited liability company which is not taxed as a corporation for federal income tax purposes; and~~

~~(4) "qualifying owner" means an owner who is a not a resident of New Mexico and who has no income from New Mexico sources (including spouse's income on a joint return) other than the owner's share of the entity's income from New Mexico or the owner's share of income from New Mexico of other entities, the income from which is reported on composite returns.~~

~~B. Qualifying owners of a qualifying entity may elect to have the entity file a composite income tax return on behalf of certain individual owners with prior approval of the department on a form prescribed by the secretary. The filing of a composite return by the entity is in lieu of the filing of individual personal income tax returns by each owner included in the return and if properly completed the filing of the composite return shall fulfill the filing requirement for each owner qualified to be included in, and included in, the return.~~

~~C. An entity may file a composite return on behalf of its qualified owners if the following conditions are met:~~

~~(1) the entity assumes responsibility for payment of any liability of each qualified owner included in the composite return for income tax due to New Mexico for the taxable year for which the return is filed.~~

~~(2) all qualified owners included in the composite return report, for federal income tax purposes, on the same fiscal year basis as the fiscal year for which the composite return is being reported.~~

~~D. The entity shall exclude from the composite filing any owner who is a resident of New Mexico or who is a nonresident of New Mexico having income from other sources within New Mexico, including any income of a spouse.~~

~~E. Corporations shall always be excluded from composite returns filed by any entity. Corporations which are partners in a partnership or members of a limited liability company which partnership or company derives income from New Mexico sources must file, in accordance with the Corporate Income and Franchise Tax Act, a New Mexico corporate income and franchise tax return and must include all sources of income, including income from the partnership or limited liability company, in that return.~~

~~(1) A partnership which has elected to report for federal income tax purposes as a corporation may not file composite returns. Each partner of such a partnership shall file separate individual or corporate income tax returns for New Mexico.~~

~~(2) A limited liability company which is taxed as a corporation for federal income tax purposes may not file composite returns. Each member of such a company shall file separate individual or corporate income tax returns for New Mexico.~~

~~F. The following requirements must be met for an authorized representative to file a composite return on behalf of qualifying owners of an entity:~~

~~(1) All qualifying owners included in the composite return must authorize in writing the authorized representative to file the New Mexico income tax return on their behalf.~~

~~(2) No qualifying owner may be included in a composite return if that owner files an individual New Mexico income tax return for the same taxable year for which the composite return is filed. A qualifying owner may be included in more than one composite return if the qualifying owner has income from more than one entity and does not file an individual New Mexico income tax return for that same year.~~

~~(3) The composite return must be accompanied by the following information for each owner of the entity, whether included or excluded from the composite return:~~

~~(a) the name of each owner;~~

~~(b) the owner's address;~~

~~(c) the owner's social security number;~~

~~(d) the income distributed to the owner;~~

~~(e) the owner's percentage of ownership in the entity; and~~

~~(f) a statement of whether the owner is included or excluded from the composite return.~~

~~(4) The composite return shall be filed under the name of the entity and shall not be filed under the name of any individual owner.~~

~~(5) The entity shall allocate and~~

~~apportion to New Mexico the income of each owner included in the composite return in accordance with the provisions of the Uniform Division of Income for Tax Purposes Act and the regulations and instructions of the department under the Income Tax Act and under the Uniform Division of Income for Tax Purposes Act. The sum of the income allocable to New Mexico plus the income apportionable to New Mexico shall be divided by the entity's total income. The result, carried to four places in decimal form, will be referred to hereinafter as the "New Mexico ratio".~~

~~(6) With respect to taxable years beginning on or after January 1, 1998, to determine the amount due for an owner included in the composite return, apply a rate equal to the maximum bracket rate set by Section 7-2-7 NMSA 1978 to the distribution of entity income to the owner without allowance for exemptions, deductions or rebates of any kind other than the deduction for interest from investments in obligations of New Mexico, the United States or other jurisdictions which states are prohibited from taxing by the laws of the United States. The resulting tax shall be multiplied by the New Mexico ratio. The amount due on the composite return shall be the aggregate amount due for all of the owners included on the return.~~

~~G. If it is determined that an individual owner who was previously included in one or more composite returns had income from sources in New Mexico other than that reported in the composite return or returns, that owner shall file an amended individual income tax return for each year in which the owner was included in a composite return and had income from sources in New Mexico other than that included in the composite return or returns. The individual owner shall receive credit against the tax due on the filing of the owner's amended individual income return for the owner's share of any income tax actually paid to this state with the composite return.~~

~~H. The filing of a composite income tax return does not relieve any owner included in the return from any liability for income tax due this state unless the tax due from the individual has actually been paid with the filing of the composite return.~~]

[RESERVED]

[8/30/95, 1/15/97, 12/15/98, 7/30/99; 3.3.12.14 NMAC - Rn & A, 3 NMAC 3.12.14, 12/14/00, A, 10/31/05; Repealed, XXX]

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

21.17.35 NMAC, Apple Maggot Interior Quarantine, adopted by the Board of Regents of New Mexico State University on 02/22/05, and filed with the State Records Center on 04/18/05, is hereby repealed effective 10/29/10.

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.3 NMAC, Sections 2, 7, with Sections 200 through 227 being renumbered and/or amended to Sections 103 through 129, the repealing of Section 226 and one new additional Section 390, effective 11/15/10.

20.11.3.2 SCOPE:

A. Action applicability:

(1) Except as provided for in Subsection C of 20.11.3.2 NMAC or [~~20.11.3.223~~] 20.11.3.126 NMAC, conformity determinations are required for:

(a) the adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the metropolitan planning organization (MPO) or the United States department of transportation (DOT);

(b) the adoption, acceptance, approval or support of transportation improvement programs (TIPs) and TIP amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the MPO or DOT; and

(c) the approval, funding or implementation of federal highway administration/federal transit administration (FHWA/FTA) projects.

(2) Conformity determinations are not required under 20.11.3 NMAC for individual projects that are not FHWA/FTA projects. However, [~~20.11.3.218~~] 20.11.3.121 NMAC [~~applies~~] does apply to such projects if they are regionally significant.

B. Geographic applicability: This transportation conformity regulation is an Albuquerque-Bernalillo county air quality control board (AQCB) regulation for Bernalillo county and is included in the state implementation plan (SIP) revision pertaining to transportation conformity for Bernalillo county. The provisions of 20.11.3 NMAC shall apply to the area within Bernalillo county for which the area is designated nonattainment or has a maintenance plan for transportation-related criteria pollutants, and shall not apply to Indian lands over which the AQCB lacks jurisdiction, except that any FHWA/FTA project on Indian land that uses funds received from the FHWA or FTA or receives a federal permit must comply with 20.11.3 NMAC.

(1) The provisions of 20.11.3 NMAC apply with respect to emissions of the following criteria pollutants: ozone (O_3), carbon monoxide (CO), nitrogen dioxide (NO_2), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$).

(2) The provisions of 20.11.3 NMAC apply with respect to emissions of the following precursor pollutants:

(a) volatile organic compounds (VOCs) and nitrogen oxides (NO_x) in ozone areas;

(b) NO_x in NO_2 areas;

(c) VOC and NO_x in PM_{10} areas if the environmental protection agency (EPA) regional administrator or the director of the air agency has made a finding that transportation-related emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

(d) NO_x in $PM_{2.5}$ areas, unless both the EPA regional administrator and the director of the state air agency have made a finding that transportation-related emissions of NO_x within the nonattainment area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or the applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

(e) VOC, sulfur dioxide (SO_2) and ammonia (NH_3) in $PM_{2.5}$ areas either if the EPA regional administrator or the director of the state air agency has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of 20.11.3 NMAC apply to $PM_{2.5}$ nonattainment and maintenance areas with respect to $PM_{2.5}$ from re-entrained road dust if the EPA regional administrator or the director of the air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

(4) The provisions of 20.11.3 NMAC apply to maintenance areas [~~for~~] through the last year of a maintenance area's approved CAA Section 175A(b) maintenance plan, unless the applicable implementation plan specifies that the provisions of 20.11.3 NMAC shall apply for more than 20 years.

C. Limitations: In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to 20.11.3. NMAC, a currently conforming transportation plan and TIP shall be in place at the time of project approval as described in [~~20.11.3.211~~] 20.11.3.114 NMAC, except as provided by Subsection B of [~~20.11.3.211~~] 20.11.3.114 NMAC.

D. Grace period for new nonattainment areas: For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM_{10}, $PM_{2.5}$ or NO_2 since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of 20.11.3. NMAC shall not apply with respect to that NAAQS for 12 months following the effective date of final designation to nonattainment for each NAAQS for such pollutant.

[7/1/98; 20.11.3.2 NMAC - Rn, 20 NMAC 11.03.I.2, 6/1/02; A, 6/13/05; A, 12/17/08; A, 11/15/10]

20.11.3.7 DEFINITIONS: Terms used but not defined in 20.11.3 NMAC shall have the meaning given to them by the CAA, Titles 23 and 49 U.S.C., other EPA regulations, or other DOT regulations, in that order of priority. In addition to

the definitions in [~~this~~] Section 20.11.3.7 NMAC, the definitions in 20.11.1 NMAC shall apply unless there is a conflict between definitions, in which case the definition in 20.11.3 NMAC shall govern.

A. "1-hour ozone NAAQS" means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9.

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

C. "24-hour PM_{10} NAAQS" means the 24-hour PM_{10} national ambient air quality standard codified at 40 CFR 50.6.

D. "1997 $PM_{2.5}$ NAAQS" means the $PM_{2.5}$ national ambient air quality standards codified at 40 CFR 50.7.

E. "2006 $PM_{2.5}$ NAAQS" means the 24-hour $PM_{2.5}$ national ambient air quality standard codified at 40 CFR 50.13.

[~~C.~~] F. "Air agency" means the air quality division (AQD) of the city of Albuquerque environmental health department (EHD). The EHD, or its successor agency or authority, as represented by the department director or his designee, is the lead air quality planning agency for Albuquerque-Bernalillo county nonattainment/ maintenance areas. The EHD serves as staff to the AQCB and is responsible for administering and enforcing AQCB regulations.

~~[D. [Reserved]]~~

[~~E.~~]G. "Albuquerque metropolitan planning area (AMPA)" means the portion of New Mexico state planning and development district 3 that comprises the area for which federal transportation funding allocated for areas of a 200,000 or greater population is expended. The AMPA is described in the MPO's most recent transportation planning documents.

H. "Annual PM_{10} NAAQS" means the annual PM_{10} national ambient air quality standard that EPA revoked on December 18, 2006.

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

[~~G.~~] J. "CAA" means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

[~~H.~~] K. "Cause or contribute to a new violation" for a project means:

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

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

[~~I~~] L. "Clean data" means air quality monitoring data determined by EPA to meet the requirements of 40 CFR Part 58 that indicate attainment of the national ambient air quality standard.

[~~J.~~] M. "Conformity analysis" means any regional emissions analysis or localized hot-spot computer modeling assessments or any other analyses, which serve as the basis for the conformity determination.

[~~K.~~] N. "Conformity determination" means the demonstration of consistency with motor vehicle emissions budgets or with the appropriate interim emissions test identified at [~~20.11.3.215~~] 20.11.3.118 NMAC for each pollutant and precursor identified in the applicable SIP. The conformity determination is the affirmative written documentation declaring conformity with the applicable implementation plan, which is submitted to FHWA and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities shall not:

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

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

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

[~~L.~~] O. "Consultation" means the process by which the affected agencies identified in [~~20.11.3.202~~] 20.11.3.105 NMAC confer with each other, provide to the agencies all relevant information needed for meaningful input and, prior to taking any action, consider the views of the other agencies and (except with respect to those actions for which only notification is required and those actions subject to Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC and Subparagraph (g) of Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC) respond in writing to substantive written comments in a timely manner prior to any final decision on such action.

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

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

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

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

[~~Q.~~] T. "DOT" means the United States department of transportation.

[~~R.~~] U. "EPA" means the United States environmental protection agency.

[~~S.~~] V. "FHWA" means the federal highway administration of the DOT.

[~~T.~~] W. "FHWA/FTA project" means any highway or transit project that is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass transit program, or requires federal highway administration (FHWA) or federal transit administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

[~~U.~~] X. "Fiscally constrained" means, consistent with DOT's metropolitan transportation planning regulations at 23 CFR Part 450.

[~~V.~~] Y "Forecast period" means, with respect to a transportation plan, the time period covered by the transportation plan pursuant to 23 CFR Part 450.

[~~W.~~] Z. "FTA" means the federal transit administration of the DOT.

[~~X.~~] AA "Highway project" means an undertaking to implement or

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

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

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

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

[~~Y.~~] **BB. "Horizon year"** means a year for which the transportation plan describes the envisioned transportation system according to [~~20.11.3.203~~] 20.11.3.106 NMAC.

[~~Z.~~] **CC. "Hot-spot analysis"** means an estimation of likely future localized CO, PM_{10} and $PM_{2.5}$ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

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

[~~BB.~~] **EE. "Isolated rural nonattainment and maintenance areas"** mean areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas.

[~~CC.~~ [~~Reserved~~]]

[~~DD.~~] **FF. "Lapse"** means that the conformity determination for a transportation plan or a TIP has expired, and thus there is no currently conforming transportation plan and TIP.

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

[~~FF.~~] **HH. "Local publicly-owned transit operator"** means the current transit operator, the city of Albuquerque.

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

[~~HH.~~] JJ. "Maintenance plan" means an implementation plan under Section 175A of the CAA, as amended.

[~~II.~~] **KK. "Metropolitan planning organization (MPO)"** means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

[~~JJ.~~] LL. "Mid-region council of governments (MRCOG)" means the association of local governments within New Mexico state planning and development district 3 (Bernalillo, Sandoval, Torrance and Valencia counties) that is designated by the governor of New Mexico, in consultation with the elected officials of the area, as the MPO for the Albuquerque metropolitan planning area.

[~~KK.~~] **MM. "Milestone"** has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM_{10} nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date when that level shall be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

[~~LL.~~] NN. "Motor vehicle emissions budget (MVEB)" means the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

[~~MM.~~] OO. "National ambient air quality standards (NAAQS)" are those standards established pursuant to Section 109 of the CAA.

[~~NN.~~] **PP. "NEPA"** means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

[~~OO.~~] QQ. "NEPA process completion" means, with respect to the FHWA and the FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a finding of no significant impact or to issue a record of decision on a final environmental impact statement under NEPA.

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

[~~QQ.~~] SS. "Project" means a highway project or a transit project.

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

[~~SS.~~] UU. "Public involvement committee (PIC)" means the permanent advisory committee established by the MRCOG to provide proactive public input to the transportation planning process.

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

[~~UU.~~] WW. "Regionally significant project" means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc. or transportation terminals) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

[~~VV.~~] XX. "Safety margin" means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable

requirement for reasonable further progress, attainment or maintenance.

[~~WW.~~] YY. **"Standard"** means a national ambient air quality standard.

[~~XX.~~] ZZ. "State implementation plan (SIP)" (see applicable implementation plan).

[~~YY.~~] AAA. "State DOT" means the New Mexico department of transportation or its successor agency or authority, as represented by the department secretary or his designee.

[~~ZZ.~~] BBB. **"Title 23 U.S.C."** means Title 23 of the United States Code.

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

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

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

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

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

[~~C C C .~~] E E E . **"Transportation conformity technical committee (TCTC)"** means the group that provides interagency consultation and consists of transportation, planning and air quality staff of the MPO, local government staff, staff from the state DOT, EPA, FHWA, FTA, and staff from the air agency, and that is responsible for evaluating and establishing the assumptions and circumstances for the application of transportation and air quality models.

[~~D D D .~~] F F F . "Transportation control measure (TCM)" means any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA Section 176(c)(8), that is either one of the types listed in Section 108 of the CAA, or any other measure that reduces emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based and maintenance-based measures that control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of 20.11.3 NMAC.

[~~E E E .~~] G G G . **"Transportation improvement program (TIP)"** means a transportation improvement program developed by a metropolitan planning organization under 23 U.S.C. 134(j).

[~~F F F .~~] H H H . "Transportation plan" means the official 20-year fiscally constrained intermodal metropolitan transportation plan (MTP) that is developed for the metropolitan planning area through the metropolitan planning process, pursuant to 23 CFR Part 450.

[~~G G G .~~] I I I . **"Transportation project"** is a highway project or a transit project.

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

[~~III.~~] KKK. **Acronyms**

(1) **AMPA** - Albuquerque metropolitan planning area

(2) **AQCB** - Albuquerque-Bernalillo county air quality control board

(3)**CAA**-Clean Air Act, as amended

(4)**CFR**-code of federal regulations

(5) **CO**-carbon monoxide

(6)**DOT**-U.S. department of transportation

(7) **EHD** - Albuquerque environmental health department

(8)**EPA**-U.S. environmental protection agency

(9)**FHWA**-federal highway administration, DOT

(10)**FTA**-federal transit administration, DOT

(11)**MPO**-metropolitan planning organization

(12) **MRCOG**-mid-region council of governments

(13) **MTB** - metropolitan transportation board

(14) **MTP** - metropolitan transportation plan

(15)**MVEB**-motor vehicle emissions budget

(16) **NAAQS**-national ambient air quality standards

(17) **NEPA** - National Environmental Policy Act

(18) **NO_x** -oxides of nitrogen

(19)**PIC**-public involvement committee

(20) **$PM_{2.5}$**-particulate matter less than or equal to 2.5 micrometers in diameter

(21) **PM_{10}**-particulate matter less than or equal to 10 micrometers in diameter

(22)**SIP**-state implementation plan (applicable implementation plan)

(23)**State DOT**-New Mexico department of transportation

(24)**STIP**-state transportation improvement program

(25)**TCC**-transportation coordinating committee

(26) **TCM**-transportation control measure

(27)**TCTC**-transportation conformity technical committee

(28)**TIP**-transportation improvement program

(29)**VOC**-volatile organic compound

(30) **VMT**-vehicle miles traveled

[7/1/98; 20.11.3.7 NMAC - Rn, 20 NMAC 11.03.I.7, & A, 6/1/02; A, 6/13/05; A, 12/17/08; A, 11/15/10]

20.11.3.13 to [~~20.11.3.199~~] 20.11.3.102
[Reserved]

[~~20.11.3.200~~] 20.11.3.103 PRIORITY: When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

[20.11.3.103 NMAC - Rn, 20.11.3.200 NMAC, 11/15/10]

[~~20.11.3.201~~] 20.11.3.104 FREQUENCY OF CONFORMITY DETERMINATIONS:

A. Conformity determinations and conformity redetermination for transportation plans, TIPs and FHWA/FTA projects shall be made according to the requirements of [~~20.11.3.201~~] 20.11.3.104 NMAC and the applicable implementation plan.

B. Frequency of conformity determinations for transportation plans:

(1) Each new transportation plan shall be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan amendments shall be found to conform before the transportation plan amendments

are approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in [~~20.11.3.223~~] 20.11.3.126 NMAC or [~~20.11.3.224~~] 20.11.3.127 NMAC. The conformity determination shall be based on the transportation plan and the amendment taken as a whole.

(3) The MPO and DOT shall determine the conformity of the transportation plan (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, a 12-month grace period will be implemented as described in Subsection F of [~~20.11.3.201~~] 20.11.3.104 NMAC. At the end of this 12-month grace period, the existing conformity determination shall lapse.

C. Frequency of conformity determinations for transportation improvement programs:

(1) A new TIP shall be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in [~~20.11.3.223~~] 20.11.3.126 NMAC or [~~20.11.3.224~~] 20.11.3.127 NMAC and has been made in accordance with the notification provisions of Subparagraph (g) of Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

(3) The MPO and DOT shall determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, a 12-month grace period will be implemented as described in Subsection F of [~~20.11.3.201~~] 20.11.3.104 NMAC. At the end of this 12-month grace period, the existing conformity determination shall lapse.

D. Projects: FHWA/FTA projects shall be found to conform before they are adopted, accepted, approved or funded. Conformity shall be re-determined for any FHWA/FTA project if one of the following occurs: a significant change in the project's design concept and scope; three years have elapsed since the most recent major step to advance the project; or initiation of a supplemental environmental document for air quality purposes. Major steps include NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; and, construction (including federal approval of plans, specifications and estimates).

E. Triggers for transportation plan and TIP conformity determinations: Conformity of existing transportation plans and TIPs shall be re-determined within two years of the following, or after a 12-month grace period (as described in Subsection F of [~~20.11.3.201~~] 20.11.3.104 NMAC) the existing conformity determination shall lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

(1) the effective date of EPA's finding that motor vehicle emission budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to Subsection E of [~~20.11.3.215~~] 20.11.3.118 NMAC and can be used for transportation conformity purposes;

(2) the effective date of EPA approval of a control strategy implementation plan revision or maintenance plan that establishes or revises a motor vehicle emissions budget if that budget has not yet been used in a conformity determination prior to approval; and

(3) the effective date of EPA promulgation of an implementation plan that establishes or revises a motor vehicle emissions budget or adds, deletes or changes TCMs.

F. Lapse grace period. During the 12-month grace period referenced in Paragraph (3) of Subsection B of [~~20.11.3.201~~] 20.11.3.104 NMAC, Paragraph (3) of Subsection C of [~~20.11.3.210~~] 20.11.3.113 NMAC, and Subsection E of [~~20.11.3.210~~] 20.11.3.113 NMAC, a project may be found to conform according to the requirements of 20.11.3 NMAC:

(1) the project is included in the currently conforming transportation plan and TIP (or regional emissions analysis); or

(2) the project is included in the most recent conforming transportation plan and TIP (or regional emissions analysis).

[20.11.3.104 NMAC - Rn & A, 20.11.3.201 NMAC, 11/15/10]

[~~20.11.3.202~~] 20.11.3.105 CONSULTATION:

A. General: Transportation plans and programs shall be in conformity with the applicable implementation plan (SIP) for the nonattainment/maintenance area of Bernalillo county. The MRCOG, as the MPO, is responsible for conducting the air quality transportation conformity analyses for all of Bernalillo county. The applicable plans and programs are the TIP and the MTP. The document serving to demonstrate conformity is the transportation/air quality conformity finding. [~~20.11.3.202~~] 20.11.3.105 NMAC provides procedures for interagency consultation (federal, state and local) and resolution of conflicts. Such consultation procedures shall be undertaken by the MPO, state DOT and DOT with the air agency and EPA before making conformity determinations and by the air agency and EPA with the MPO, state DOT and DOT in developing applicable implementation plan revisions.

B. Interagency consultation procedures: General factors: The affected agencies shall participate in an interagency consultation process to assure that proposed transportation investments conform with the applicable implementation plan developed pursuant to the CAA. The affected agencies shall participate in a consultation process during the development of the transportation-related elements in the applicable SIP (i.e. TCMs, the MTP, and the TIP under 23 CFR Section 450.314 and 49 CFR Section 613.100), any significant revisions to the preceding documents and all conformity determinations required by 20.11.3 NMAC.

(1) The affected agencies acting in consultation include: EHD; EPA; FHWA; FTA; MPO; state DOT; local publicly-owned transit operator; appropriate local government transportation agencies and land use planning agencies (e.g. city of Albuquerque and Bernalillo county planning departments); and other federal and state agencies as appropriate.

(2) Each lead agency in the consultation process required under Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC (i.e. the agency responsible for preparing the final document subject to the interagency consultation process) shall provide reasonable opportunity for consultation with the affected agencies identified above. The lead agency shall provide to the affected agencies all information needed for meaningful input and shall consider the views of each agency and respond in writing to substantive written comments submitted during the formal comment period prior to making a final decision on such document. Such written response shall be made part of the record of any decision or action. Roles of these agencies are further described in Paragraph (1) of Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC below.

(3) Project planning, public involvement, management systems, project development and other requirements for the MPO, state DOT and the local publicly-owned transit operator are covered by the applicable DOT rules and regulations for MPOs and state DOTs (23 CFR Part 450, 500, 626 and 771, 49 CFR 613).

C. Interagency consultation procedures roles and responsibilities:

(1) **Development of transportation plans and programs and**

associated conformity determinations.

(a) The MPO, as the lead transportation planning agency, has the primary responsibility in the AMPA for developing the MTP, TIP and technical analyses related to travel demand and other associated modeling, data collection and coordination of consultation for these activities with the agencies specified in Paragraph (1) of Subsection B of [~~20.11.3.202~~] 20.11.3.105 NMAC, in accordance with 23 CFR Part 450, 500 and 626. The MPO shall be responsible for regional emissions and travel demand analyses of the MTP and TIP in consultation with the EHD. Corridor and project-level hot spot and emissions analyses, developed in consultation with the EHD, shall be the responsibility of the project-implementing agency through the NEPA process or similar environmental evaluation process.

(b) The committees and member agencies, identified in the most recent MPO document regarding public involvement procedures for transportation plans and programs, entitled *Public Involvement Procedures for the Mid-Region Council of Governments Acting as the MPO for the Albuquerque Metropolitan Planning Area*, shall participate in the MPO process for the development, monitoring and revision of the MTP and the development of the TIP.

(i) The MPO shall forward a preliminary version of the MTP, the TIP and the draft conformity finding to the AQCB for review with a minimum of 14 calendar days to provide comments. Upon release of the final draft of the MTP and TIP for public review, the MPO shall submit the final drafts of the MTP, TIP and accompanying conformity documents to the AQCB and agencies in Paragraph (1) of Subsection B of [~~20.11.3.202~~] 20.11.3.105 NMAC for review and comment before adoption and final approval by the MTB. Following review of the conformity determination, the AQCB shall state whether the TIP, the MTP or both are in compliance with the applicable implementation plan. The MPO shall provide a review and comment period consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(a), 49 CFR Section 613). Briefings to the AQCB shall be provided upon request.

(ii) The MPO shall provide information and appropriate advance notification of meeting places, dates and times, agendas and supporting materials for all of its special and regularly scheduled meetings on transportation and air quality to each of the agencies specified in Paragraph (1) of Subsection B of [~~20.11.3.202~~] 20.11.3.105 NMAC in accordance with the public involvement process adopted by the MPO, consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(a), 49 CFR Section 613) and described in the MRCOG's public involvement document, entitled *Public Involvement Procedures for the Mid-Region Council of Governments Acting as the MPO for the Albuquerque Metropolitan Planning Area*. The MPO's compliance with the New Mexico Open Meetings Act is documented annually. Resolution of conflicts shall follow the provisions of Subsection E of [~~20.11.3.202~~] 20.11.3.105 NMAC.

(2) **Development of applicable implementation plans:** Within the nonattainment/maintenance area, the EHD, in consultation with the MPO, shall be responsible for developing the transportation-related components for the applicable SIP, air quality modeling, general emissions analysis, emissions inventory, all related activities and coordination of these tasks with the agencies specified in Paragraph (1) of Subsection B of [~~20.11.3.202~~] 20.11.3.105 NMAC through the TCTC as described in Subparagraph (a) of Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC. Upon release of the final draft of the SIP revision for public review, the EHD shall submit the final draft document to the MTB and agencies in Paragraph (1) of Subsection B of [~~20.11.3.202~~] 20.11.3.105 NMAC for review and comment before final adoption by the AQCB. The EHD shall provide at least a 30 day review and comment period consistent with CAA requirements. Briefings to the MTB shall be provided upon request.

(3) The organizational level of regular consultation is described in Subsection B of [~~20.11.3.202~~] 20.11.3.105 NMAC and Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC. All correspondence concerning consultation related to the transportation conformity SIP shall be addressed to the designated points of contact below:

(a) EPA: regional administrator or designee;

(b) FHWA: division administrator or designee;

(c) FTA: regional administrator or designee;

(d) State DOT: secretary of transportation or designee;

(e) MPO: MRCOG executive director or designee;

(f) EHD: director or designee;

(g) local publicly-owned transit operator: chief administrative officer or designee;

(h) local governments within the nonattainment/maintenance area: chief administrative officer or equivalent or designee.

(4) The MPO shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of [~~20.11.3.202~~] 20.11.3.105 NMAC regarding the MTP, TIP and related conformity determinations The project implementing agencies shall respond in writing to substantive written comments regarding projects in accordance with the provisions of 20.11.3 NMAC. The EHD shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of [~~20.11.3.202~~] 20.11.3.105 NMAC regarding the transportation components of the applicable implementation plan for the nonattainment/maintenance area, in accordance with the provisions of 20.11.3 NMAC. All formal comments (e.g. those received during the public comment period) and responses to those comments shall be included within final documents before they are forwarded for review and final approval by the FHWA/FTA or EPA, as appropriate.

(5) Prior to AQCB adoption of a TCM in the applicable implementation plan, the MPO shall, in consultation and coordination with the agencies identified in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC, develop the proposed TCM in a manner consistent with the MTP and TIP transportation development processes. After approval of a TIP, MTP or both, the AQCB shall incorporate all proposed TCMs into the applicable implementation plan. The necessary TCMs shall be specifically described in the applicable implementation plan. TCMs shall also be cross-referenced to the approved TIP, MTP or both. EHD shall coordinate the necessary efforts to achieve inclusion of the proposed TCM into the applicable implementation plan. The TCMs approved by the AQCB and subsequently by the EPA as part of the applicable implementation plan shall receive priority funding for implementation in a manner consistent with funding and phasing schedules specified in the MPO's TIP or MTP or both.

(a) In the event that implementation of a TCM is infeasible in the time frame for that measure in the applicable implementation plan (as defined in Subsection D of 20.11.3.7 NMAC), the parties in the interagency consultation process established pursuant to Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC shall assess whether such a measure continues to be appropriate. When the MPO and the AQCB concur that a TCM identified in the applicable implementation plan is no longer appropriate, the agencies may initiate the process described in Subparagraph (b) through Subparagraph (e) of Paragraph (5) of Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC to identify and adopt a substitute TCM.

(b) **Substitution of TCMs**. Any TCM that is specified in the applicable implementation plan may be replaced or

added to the implementation plan with alternate or additional TCMs without an implementation plan revision if the proposed measure meets the following provisions:

(i) upon request by the MPO, the EHD shall convene the TCTC to identify and evaluate possible substitute and additional measures; consultation with EPA may be accomplished by sending copies of all draft and final documents, agendas and reports to EPA Region 6;

(ii) the substitute TCM shall provide for equivalent or greater emissions reductions than the TCM to be replaced in the applicable implementation plan, as demonstrated by an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced TCM in the implementation plan;

(iii) the substitute TCM shall be implemented in accordance with a schedule that is consistent with the schedule provided for the TCM contained in the applicable implementation plan; or if the implementation plan date for implementation of the TCM to be replaced has already passed, a TCM selected pursuant to 20.11.3 NMAC that requires funding shall be included in the first year of the next MTP and TIP adopted by the MPO; however, the substituted TCM shall be implemented as soon as possible, but not later than one year from the date of the original TCM, and in no case, later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iv) in order for the AQCB to adopt substitute and additional TCMs, there shall be evidence of adequate personnel, funding and authority under state or local law to implement, monitor and enforce the control measures; commitments to implement the substitute TCMs shall be made by the agency with legal authority for implementation;

(v) the TCMs substituted under [~~20.11.3.202~~] 20.11.3.105 NMAC for purposes of the applicable implementation plan shall receive priority funding for implementation within the MPO's MTP and TIP funding processes; and

(vi) no TCM shall be replaced until the substitute TCM has been adopted and the existing TCM in the applicable implementation plan has been rescinded by the AQCB; adoption of a substitute TCM by the AQCB formally rescinds the previously applicable TCM and adopts the substitute TCM.

(c) **Public participation:** After the concurrence required under Subparagraph (a) of Paragraph (5) of Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC, the AQCB shall conduct a public hearing and comment process, in accordance with 40 CFR 52.102, on the proposed substitute TCM(s). The hearing can only be held after a reasonable public notice and comment period, which begins at least 30 days prior to the hearing date. The AQCB shall ensure that:

(i) the public is notified by prominent advertising in the area affected announcing the time, date and place of the hearing;

(ii) each proposed plan or revision is available for public inspection in at least one location in the applicable area;

(iii) the MPO, EPA, affected local agencies and other interested parties are notified; and

(iv) a description of the TCM(s), analysis supporting the proposal, assumptions and methodology are available to the public, the MPO and EPA for at least 30 days before the public hearing and at least 30 days prior to the close of the public comment period.

(d) **Concurrence process for substitute TCMs:**

(i) before initiating any public participation process, the AQCB, MPO and EPA shall concur with the appropriateness and equivalency of the substitute or additional TCM;

(ii) the AQCB shall respond to all public comments and submit to EPA a summary of comments received during the public comment period along with the responses following the close of the public comment period;

(iii) the EPA shall notify the AQCB within 14 days if EPA's concurrence with the substitution TCM has changed as a result of public comment;

(iv) all substitute TCMs shall be adopted by the AQCB following the public comment period and EPA's concurrence described in Subparagraph (d) of Paragraph (5) of Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC; if not adopted, the substitute TCM cannot replace the existing TCM.

(e) **Technical information:** The analysis of substitute TCMs shall be consistent with methodology used for evaluating TCMs in the nonattainment or maintenance plan. Where emissions models or transportation models have changed since those used for purposes of evaluating measures in the nonattainment or maintenance plan, the TCM to be replaced and the substitute TCMs shall be evaluated using the latest modeling techniques for purposes of demonstrating equivalency or greater emissions reductions. The key methodology and assumptions shall be consistent with EPA approved regional and hot-spot emissions models (for CO, PM_{10} and $PM_{2.5}$), the area's transportation model, and population and employment growth projections.

(f) **Record keeping:** The AQCB shall maintain documentation of approved TCM substitutions. The documentation shall provide a description of the substitute and replaced TCMs, including requirements and schedules. The documentation shall also provide a description of the substitution process including the public and agency participation and coordination with the TCTC, the public hearing and comment process, EPA concurrence and AQCB adoption. The documentation shall be submitted to EPA following adoption of the substitute TCMs by the AQCB, and made available to the public as an attachment to the applicable implementation plan.

(g) **Adoption:**

(i) concurrence by the metropolitan planning organization, the state air pollution control agency and the administrator as required by Subparagraph (i) of Paragraph (d) of Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC, shall constitute adoption of the substitute or additional control measures so long as the requirements of Paragraph (b) of Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC are met;

(ii) once adopted, the substitute or additional control measures become, by operation of law, part of the state implementation plan and become federally enforceable;

(iii) within 90 days of its concurrence under Subparagraph (i) of Paragraph (d) of Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC, the state air pollution control agency shall submit the substitute or additional control measure to the administrator for incorporation in the codification of the applicable implementation plan; notwithstanding any other provision of the Clean Air Act, no additional state process shall be necessary to support such revision to the applicable plan.

(h) **No requirement for express permission**. The substitution or addition of a transportation control measure in accordance with Paragraph (5) of Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC and the funding or approval of such a control measure shall not be contingent upon the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

(i) **No requirement for new conformity determination**. The substitution or addition of a transportation control measure in accordance with Paragraph (5) of Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC shall not require:

(i) a new conformity determination for the transportation plan; or

(ii) a revision of the implementation plan.

D. Interagency consultation procedures: Specific processes.

(1) Interagency consultation

procedures for the Bernalillo county nonattainment/maintenance area, in accordance with Subsection C of [~~20.11.3.202~~] 20.11.3.105 NMAC, shall involve the MPO (transportation, land use and transit members from within the AMPA), state DOT, EPA, FHWA, FTA and the air agency. The TCTC's role in interagency consultation for the specific processes is described below. The TCTC shall include representatives as described in Paragraph (1) of Subsection B of [~~20.11.3.202~~] 20.11.3.105 NMAC. The TCTC shall be established by the air agency in cooperation with the MPO. The TCTC shall meet on an as-needed basis. The air agency, in consultation with the MPO, shall be responsible for convening meetings and establishing meeting agendas.

(a) The TCTC shall evaluate and participate in establishing the circumstances for the application of a transportation or air quality model (or models). Committee review shall include VMT forecasting and associated methods and assumptions to be used in: 1) hot-spot and regional emissions analysis for establishing motor vehicle emissions budgets; 2) developing the MTP and the TIP; 3) developing implementation plan revisions directly applicable to transportation, and 4) making the conformity determinations and planning assumptions identified in [~~20.11.3.207~~] 20.11.3.110 NMAC. The TCTC shall also review assumptions, analyses and results of the conformity and fiscal constraint determinations and other applicable implementation plan revisions or actions affecting the MTP and transportation programs. The TCTC shall function as a cooperative interagency effort to share mobile source modeling and transportation and air quality modeling information, and to evaluate modeling assumptions through interagency consultation. Regional modeling shall be the responsibility of the MPO and the air agency as appropriate. Hot-spot analysis shall be the responsibility of the lead agency of the project requiring the analysis. Before new models used in hot-spot or regional emissions analyses are adopted for general use, the TCTC shall be provided an opportunity to review and comment. This process also applies to consultation on the design, schedule and funding of research and data collection efforts regarding regional transportation models developed by the MPO (e.g. household travel transportation surveys) described in [~~20.11.3.207~~] 20.11.3.110 NMAC. New modeling information shall be presented by the air agency and the MPO in regularly scheduled meetings.

(b) The TCTC shall determine which minor arterials and other transportation projects shall be considered regionally significant for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects shall be considered to have a significant change in design concept, timing and scope from the MTP or TIP. When the TCTC determines that a significant change in design concept, timing and scope has occurred, the MPO and lead agency shall, as part of the MTP and TIP process, consult with the appropriate agencies identified in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC to assess the impact of this project change on the conformity determination. The MPO shall redetermine transportation conformity for air quality if a significant change occurs within the transportation network that is likely to lead to a meaningful increase in a pollutant for which the nonattainment area exceeds the NAAQs, or for an area that is designated as attainment and is subject to a maintenance plan.

(c) The TCTC shall evaluate whether projects otherwise exempt from meeting the regional or hot-spot conformity analysis requirements shall be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The MPO's conformity documents shall include a list of transportation projects exempted from inclusion in a regional conformity determination. Exempt projects are identified in [~~20.11.3.223~~] 20.11.3.126 NMAC and [~~20.11.3.224~~] 20.11.3.127 NMAC. The process used to reach a determination of exemption shall include an evaluation of whether or not the exempt project shall interfere with or impede the implementation of TCMs in the applicable implementation plan. If no substantive comments related to air quality impacts are received as part of the TIP review process, the lead agency for the project may proceed with implementation of the exempt project. If substantive air quality impact comments are received which indicate that an exempt project may adversely affect air quality, the lead agency for the project shall consult with the air agency and the MPO to determine the appropriate action necessary to address the adverse air quality impacts.

(d) If TCMs are included in the SIP, the MPO shall give maximum priority to approval or funding of those TCMs, report to the AQCB annually whether those TCMs are on schedule and, if not, what delays have been encountered, what obstacles to implementation have been identified and whether or not these obstacles are likely to be overcome. The AQCB shall also consider whether delays in TCM implementation necessitate a SIP revision to remove, substitute, or modify TCMs or identify other reduction measures. If substitute TCMs or other reduction measures beyond those already in the SIP are deemed necessary through the consultation process specified in [~~20.11.3.202~~] 20.11.3.105 NMAC, the MPO shall work with the members of the TCTC to identify and coordinate appropriate modifications to the MTP, TIP and conformity determination. All revisions to the MTP, TIP and conformity determination shall be made as part of the MPO's transportation planning process.

(e) The MPO shall, through its transportation planning process, notify the agencies represented on the TCTC regarding revisions and amendments to the MTP and TIP that merely add or delete exempt projects identified in [~~20.11.3.223~~] 20.11.3.126 NMAC.

(f) If Bernalillo county is designated nonattainment for PM_{10} or $PM_{2.5}$, the consultative process as specified in Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC shall be used to coordinate the identification of projects located at sites that have vehicle and roadway emission and dispersion characteristics which are similar to those sites that have violations verified by monitoring. A quantitative PM_{10} hot-spot analysis shall be required for these projects in accordance with Subsection B of [~~20.11.3.220~~] 20.11.3.123 NMAC. The air agency, in consultation with the MPO, shall advise the appropriate lead agency responsible for project development of the projects identified and the basis for their identification.

(g) The MPO shall provide written notification to all agencies in the MTP, TIP and conformity determination processes, including the AQCB, of plan revisions or plan amendments that merely add or delete exempt projects identified in [~~20.11.3.223~~] 20.11.3.126 NMAC.

(h) Requirements for conformity tests for isolated rural nonattainment and maintenance areas shall be governed by [~~Paragraph (2) of Subsection L of 20.11.3.206 NMAC~~] Subparagraph (c) of Paragraph (2) of Subsection N of 20.11.3.109 NMAC.

(2) Interagency consultation procedures shall include the agencies specified in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC. These agencies shall participate in the following processes.

(a) In addition to the triggers defined in [~~20.11.3.201~~] 20.11.3.105 NMAC, the air agency may request a new conformity determination when an emergency project involves substantial functional, location or capacity changes, or when the project may otherwise adversely affect the transportation conformity determination.

(b) If an adjacent area is designated nonattainment and the area includes another MPO, the agencies involved shall cooperatively share the responsibility for conducting conformity determinations for transportation activities that cross borders

of the MPOs or nonattainment areas. An agreement shall be developed between the MPOs and other appropriate local and state government agencies to address the responsibilities of each for regional emissions analysis.

(3) Although the metropolitan planning area may not include all of the nonattainment/ maintenance area of Bernalillo county, the MPO (which is also the regional planning organization for all of Bernalillo county), in coordination with the state DOT, shall be responsible for conducting conformity analyses and conformity determinations for transportation activities for the entire nonattainment/ maintenance area that is located within the MPO's area of planning responsibility.

(4) **Interagency consultation on regionally significant non-FHWA/FTA projects:**

(a) Any group, entity or individual planning to construct a regionally significant transportation project that is not a FHWA/ FTA project (including a project for which alternative locations, design concept and scope, or the no-build option is still being considered), including projects planned by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, shall ensure that these plans are disclosed to the MPO on a regular basis through the MTP and TIP development processes, or as soon as they are identified, and shall notify the MPO immediately of any changes to an existing plan so that these transportation projects can be incorporated into the regional emissions analysis and modeling for the nonattainment/ maintenance area. Any member of the TCTC may request that the TCTC make a determination regarding whether a project is regionally significant. Upon receipt of a written request stating the reasons why the TCTC should make a determination, the EHD in coordination with the MRCOG shall convene a meeting of the TCTC to make a determination regarding regional significance. If the TCTC determines that the non-FHWA/FTA project is not regionally significant, no further actions by the TCTC are required. If the TCTC determines that the non-FHWA/FTA project is regionally significant, the TCTC will follow the requirements of 20.11.3 NMAC and the MPO will incorporate the project into the regional emissions analysis, the TIP and the MTP.

(b) The sponsor of any regionally significant project, and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, who knows about any such project through applications for approval, permitting, funding or otherwise gains knowledge of a regionally significant project, shall promptly disclose the project to the MPO. Such disclosures shall be made not later than the first occasion on which any of the following actions is sought: any MTB action or other action by government decision making bodies necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent upon the completion of a regionally significant project. At the earliest opportunity, the MPO shall apprise the agencies participating in the consultation process identified above in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC of these projects and include them in the conformity analysis networks.

(c) **Procedures to address non-conforming regionally significant projects not in the TIP or MTP or both.** When an regionally significant project has not been included in the TIP or MTP or both, the TCTC shall participate in the air quality evaluation of a non-conforming regionally significant project to ensure that the project is integrated into the regional emissions analysis, the TIP and the MTP in a manner consistent with the MPO's transportation planning process, the requirements of 20.11.3 NMAC and other applicable federal requirements. Section 23 CFR 450.316 lists factors that shall be considered as part of the planning process. Among the factors that shall be considered is an analysis of the effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the funding source. Therefore, a regionally significant project funded entirely with local funding is subject to the planning requirements of Section 23 CFR 450.316. The analysis shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation demand and supporting the overall efficiency and effectiveness of transportation system performance and related impacts on community/central city goals regarding social and economic development, housing and employment. Another factor that shall be considered is the overall social, economic, energy and environmental effects of transportation decisions (including consideration of the effects and impacts of the transportation plan on the human, natural and man-made environment and consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation-related air quality problems in support of 23 U.S.C. 109(h) and Section 14 of the Federal Transit Act (49 U.S.C. 1610), Section 4(f) of the DOT Act (49 U.S.C. 303) and Section 174(b) of the Clean Air Act (42 U.S.C. 7504(b)). All projects, including regionally significant projects not yet included in a TIP or MTP or both, shall follow the requirement in 23 CFR 450.316 that calls for a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs and that provides for involvement of local, state and federal environment resource (e.g., EPA, EHD) and permit agencies as appropriate.

(d) If a regionally significant project has not been disclosed in a timely manner to the MPO and other agencies involved in the consultation process, then, for the purposes of [~~20.11.3.218~~] 20.11.3.121 NMAC, the regionally significant project shall not qualify as a conforming project until the project complies with the requirements of 20.11.3 NMAC. When a regionally significant project has not been included in the regional emissions analysis for the current conforming TIP or MTP or both, proceeding toward implementing the project without complying with [~~20.11.3.202~~] 20.11.3.105 NMAC and [~~20.11.3.218~~] 20.11.3.121 NMAC may be inconsistent with federal and local laws including, but not limited to the following.

(i) **23 U.S.C. Section 109(i).** This requires that the secretary of transportation for the DOT consult with the administrator for the EPA to develop and promulgate guidelines to assure that highways constructed pursuant to Title 23 of the U.S. Code are consistent with the applicable implementation plan pertaining to a nonattainment area or an attainment area subject to a maintenance plan. 20.11.3 NMAC is part of the applicable implementation plan.

(ii) **23 CFR Section 450.312, metropolitan transportation planning: Responsibilities, cooperation, and coordination.** This prohibits the MRCOG from approving any transportation plan or program that does not conform to the applicable implementation plan. Regionally significant projects are required to be included in the regional emissions analysis for the transportation plan or program.

(iii) **23 CFR Section 450.324, transportation improvement program: General.** This requires that the TIP include all regionally significant projects to be funded with non-federal funds in the air quality analysis for nonattainment areas and areas subject to a maintenance plan.

(iv) **20.11.3 NMAC, *Transportation Conformity*.** This regulation requires that regionally significant projects

be included in the transportation plans and the regional emissions analysis. Failure to include a regionally significant project in a transportation plan violates 20.11.3 NMAC and jeopardizes approval of the regional MTP and the TIP.

(e) **Consequences of implementing a non-conforming regionally significant project:** Violations of 20.11.3 NMAC may result in criminal, civil and administrative penalties, including a potential administrative penalty of $15,000 per day of non-compliance. In addition, the EPA may determine that implementing a nonconforming regionally significant project violates the applicable implementation plan, and the EPA may impose federal sanctions that would jeopardize the receipt of federal transportation funds to the affected area, including Title 23, U.S.C. or Federal Transit Act funds. In addition, the FHWA must periodically review the transportation planning process used by the MRCOG, and failure to follow federal requirements may adversely affect FHWA's certification of the MRCOG process.

(f) For the purposes of [~~20.11.3.202~~] 20.11.3.105 NMAC and [~~20.11.3.218~~] 20.11.3.121 NMAC, the phrase "adopt or approve a regionally significant project" means the first time any action necessary to authorize a project occurs, such as any MTB action or other action by government decision making bodies necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

(5) When there is insufficient information to model the projects described in Paragraph (4) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC, the MPO, in consultation with the lead agency for the project, shall make assumptions about the location, timing, design concept and scope for those projects that are disclosed to the MPO as required in Paragraph (4) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

(6) The MPO or other consulting agencies shall provide copies of adopted documents and supporting information on the approved MTP or TIP conformity determination or adopted SIP revisions to all agencies listed in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

E. Resolving conflicts:

(1) The air agency and the MPO (or state DOT when applicable) shall make a good-faith effort to address the major concerns of the other party and reach a resolution. Every reasonable effort shall be made to resolve differences. In the event that the parties cannot reach agreement, the conflict shall be escalated to the governor.

(2) In the event that the parties agree that every reasonable effort has been made to address major concerns but no further progress is possible, the MPO shall promptly notify the director of the air agency in writing of the inability to resolve concerns or agree upon the final decision or action. Notification shall be provided within 30 days and shall be provided by registered mail. The MPO shall cite this paragraph in any such notification to the air agency.

(3) The air agency has 14 calendar days from the date of receipt of notification as required in Paragraph (2) of Subsection E of [~~20.11.3.202~~] 20.11.3.105 NMAC to appeal to the governor. Notification shall be provided by registered mail. The air agency shall cite this paragraph in any notification of a conflict that requires action by the governor or his designee. If the air agency appeals to the governor, the final conformity determination shall have the concurrence of the governor. The governor or his designee may issue a written decision on the appeal within 30 calendar days of receipt of the appeal. If the air agency does not appeal to the governor within 14 calendar days from receipt of written notification, the MPO may proceed with the final conformity determination. The governor may delegate his role in this process, but not to the members or staff of: the AQCB, director of the city or county EHD, secretary of the environment department, chief of the state air quality bureau, manager of the city of Albuquerque's air quality division, the environmental improvement board, secretary of the DOT, state highway commission or an MPO.

F. Public consultation procedures: Affected agencies making conformity determinations on transportation plans, programs and projects shall establish a proactive public involvement process that provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for the MTP and TIP, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying shall be consistent with the fee schedule contained in 49 CFR 7.43 and NMSA 14-2-9.B.3. In addition, these agencies shall specifically address in writing all public comments stating that known plans for a regionally significant project, which is not receiving FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis that supports a proposed conformity finding for the MTP or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

[20.11.3.105 NMAC - Rn & A, 20.11.3.202 NMAC, 11/15/10]

[~~20.11.3.203~~] 20.11.3.106 CONTENT OF TRANSPORTATION PLANS AND TIMEFRAME OF CONFORMITY DETERMINATIONS:

A. Transportation plans adopted after January 1, 1997 in serious, severe or extreme ozone non-attainment areas and in serious CO nonattainment areas. If the metropolitan planning area contains an urbanized area population greater than 200,000, the transportation plan shall specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The MPO, in developing the transportation plan in consultation with the affected agencies identified in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC, may choose any years to be horizon years, subject to the following restrictions:

(a) horizon years may be no more than 10 years apart;

(b) the first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model;

(c) the attainment year must be a horizon year if it is in the timeframe of the transportation plan and conformity determination;

(d) the last year of the transportation plan's forecast period shall be a horizon year; and

(e) if the timeframe of the conformity determination has been shortened under Subsection D of 20.11.3 NMAC, the last year of the timeframe of the conformity determination must be a horizon year.

(2) For these horizon years:

(a) the transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by [~~20.11.3.202~~] 20.11.3.105 NMAC;

(b) the highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years; additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between

transportation analysis zones; each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO; transit facilities, equipment and services envisioned for the future shall be identified in terms of design concept, design scope and operating policies that are sufficient for modeling transit ridership; additions and modifications to the transportation network shall be described sufficiently to demonstrate a reasonable relationship between expected land use and the envisioned transportation system; and

(c) other future transportation policies, requirements, services and activities, including intermodal activities, shall be described.

B. Two-year grace period for transportation plan requirements in certain ozone and CO areas: The requirements of Subsection A of [~~20.11.3.203~~] 20.11.3.106 NMAC apply to such areas or portions of such areas that have previously not been required to meet these requirements for any existing NAAQS two years from the following:

(1) the effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) the official notice by the census bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or,

(3) the effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

C. Transportation plans for other areas: Transportation plans for other areas shall meet the requirements of Subsection A of [~~20.11.3.203~~] 20.11.3.106 NMAC at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future shall be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of [~~20.11.3.206~~] 20.11.3.109 NMAC through [~~20.11.3.216~~] 20.11.3.119 NMAC.

D. Timeframe of conformity determination:

(1) Unless an election is made under Paragraph (2) or (3) of Subsection D of [~~20.11.3.203~~] 20.11.3.106 NMAC, the timeframe of the conformity determination shall be through the last year of the transportation plan's forecast period.

(2) For areas that do not have an adequate or approved CAA Section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the transportation plan and TIP conformity determination, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(a) The shortened timeframe of the conformity determination must extend at least to the latest of the following years:

(i) the tenth year of the transportation plan;

(ii) the latest year for which an adequate or approved motor vehicle emissions budget(s) is established in the submitted or applicable implementation plan; or

(iii) the year after the completion date of a regionally significant project if the project is included in the TIP or the project requires approval before the subsequent conformity determination.

(b) The conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis, if such a year extends beyond the timeframe of the conformity determination.

(3) For areas that have an adequate or approved CAA Section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the conformity determination to extend through the last year of such maintenance plan after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(4) Any election made by an MPO under Paragraph (2) or (3) of Subsection D of [~~20.11.3.203~~] 20.11.3.106 NMAC shall continue in effect until the MPO elects otherwise, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

E. Savings: The requirements of [~~20.11.3.203~~] 20.11.3.106 NMAC supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

[20.11.3.106 NMAC - Rn & A, 20.11.3.203 NMAC, 11/15/10]

[~~20.11.3.204~~] 20.11.3.107 RELATIONSHIP OF TRANSPORTATION PLAN AND TIP CONFORMITY WITH THE NEPA PROCESS: The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project shall meet the criteria in [~~20.11.3.206~~] 20.11.3.109 NMAC through [~~20.11.3.216~~] 20.11.3.119 NMAC for projects not from a TIP before NEPA process completion.

[20.11.3.107 NMAC - Rn & A, 20.11.3.204 NMAC, 11/15/10]

[~~20.11.3.205~~] 20.11.3.108 FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND TIPS: Transportation plans and TIPs shall be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR Part 450 in order to be found in conformity. The determination that the MTP and TIP are fiscally constrained is made through the MPO's transportation planning process, which includes the agencies represented in the consultation process described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

[20.11.3.108 NMAC - Rn & A, 20.11.3.205 NMAC, 11/15/10]

[~~20.11.3.206~~] 20.11.3.109 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS: GENERAL:

A. In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT shall demonstrate that the applicable criteria and procedures in 20.11.3 NMAC are satisfied. The MPO and DOT shall comply with all applicable conformity requirements of implementation plans and court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs and FHWA/FTA projects), the relevant pollutant(s) and the status of the implementation plan.

B. Table 1 in Subsection B of [~~20.11.3.206~~] 20.11.3.109 NMAC indicates the criteria and procedures in [~~20.11.3.207~~] 20.11.3.110 NMAC through [~~20.11.3.216~~] 20.11.3.119 NMAC, which apply for transportation plans, TIPs and FHWA/FTA projects. Subsection C through Subsection [~~I~~] K of [~~20.11.3.206~~] 20.11.3.109 NMAC explains when the budget, interim emissions and hot-spot tests are required for each pollutant and NAAQS. Subsection [~~J~~] L of [~~20.11.3.206~~] 20.11.3.109 NMAC addresses conformity requirements for areas with approved or adequate limited maintenance plans. Subsection [~~K~~] M of [~~20.11.3.206~~] 20.11.3.109 NMAC addresses nonattainment and maintenance areas which EPA has determined have insignificant motor

vehicle emissions. Subsection [~~L~~] N of [~~20.11.3.206~~] 20.11.3.109 NMAC addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

TABLE 1. CONFORMITY CRITERIA

All Actions at all times:	
[~~20.11.3.207~~] 20.11.3.110 NMAC	Latest planning assumptions
[~~20.11.3.208~~] 20.11.3.111 NMAC	Latest emissions model
[~~20.11.3.209~~] 20.11.3.112 NMAC	Consultation
Transportation Plan:	
Subsection B of [~~20.11.3.210~~] 20.11.3.113 NMAC	TCMs.
[~~20.11.3.215~~] 20.11.3.118 or [~~20.11.3.216~~] 20.11.3.119 NMAC	Emissions budget or interim emissions
TIP:	
Subsection C of [~~20.11.3.210~~] 20.11.3.113 NMAC	TCMs.
[~~20.11.3.215~~] 20.11.3.118 or [~~20.11.3.216~~] 20.11.3.119 NMAC	Emissions budget or interim emissions
Project (from a conforming plan and TIP):	
[~~20.11.3.211~~] 20.11.3.114 NMAC	Currently conforming plan and TIP
[~~20.11.3.212~~] 20.11.3.115 NMAC	Project from a conforming plan and TIP
[~~20.11.3.213~~] 20.11.3.116 NMAC	CO, PM10 and PM 2.5 hot-spots
[~~20.11.3.214~~] 20.11.3.117 NMAC	PM10 and PM2.5 control measures
Project (Not From a Conforming Plan and TIP):	
Subsection D of [~~20.11.3.210~~] 20.11.3.113 NMAC	TCMs.
[~~20.11.3.211~~] 20.11.3.114 NMAC	Currently conforming plan and TIP
[~~20.11.3.213~~] 20.11.3.116 NMAC	CO, PM10 and PM2.5 hot-spots
[~~20.11.3.214~~] 20.11.3.117 NMAC	PM10 and PM2.5 control measures
[~~20.11.3.215~~] 20.11.3.118 or [~~20.11.3.216~~] 20.11.3.119 NMAC	Emissions budget or interim emissions

C. 1-hour ozone NAAQS nonattainment and maintenance areas: Subsection C of [~~20.11.3.206~~] 20.11.3.109 NMAC applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (i.e. until the effective date of any revocation of the 1-hour ozone NAAQS for an area). In addition to the criteria listed in Table 1 in Subsection B of [~~20.11.3.206~~] 20.11.3.109 NMAC that are required to be satisfied at all times, in such ozone nonattainment and maintenance areas, conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:

(1) In all 1-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as required by [~~20.11.3.215~~] 20.11.3.118 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS is adequate for transportation conformity purposes;

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

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

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests shall be satisfied as required by [~~20.11.3.216~~] 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 1-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS.

(3) An ozone nonattainment area shall satisfy the interim emissions test for NO_x, as required by [~~20.11.3.216~~] 20.11.3.119 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 1-hour ozone NAAQS shall be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990.

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

(a) the interim emissions tests required by [~~20.11.3.216~~] 20.11.3.119 NMAC; or

(b) the state shall submit to EPA an implementation plan revision for the 1-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by [~~20.11.3.215~~] 20.11.3.118 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (1) of Subsection C of [~~20.11.3.206~~] 20.11.3.109 NMAC).

(5) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection C of [~~20.11.3.206~~] 20.11.3.109 NMAC, moderate and above ozone nonattainment areas with three years of clean data for the 1-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 1-hour ozone NAAQS shall satisfy one of the following requirements:

(a) the interim emissions tests as required by [~~20.11.3.216~~] 20.11.3.119 NMAC;

(b) the budget test as required by [~~20.11.3.215~~] 20.11.3.118 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 1-hour ozone NAAQS (subject to the timing requirements of Paragraph (1) of Subsection C of [~~20.11.3.206~~] 20.11.3.109 NMAC; or

(c) the budget test as required by [~~20.11.3.215~~] 20.11.3.118 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 1-hour ozone NAAQS.

D. 8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area: Subsection D of [~~20.11.3.206~~] 20.11.3.109 NMAC applies to areas that were never designated nonattainment for the 1-hour ozone NAAQS and areas that were designated nonattainment for the 1-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. Subsection D of [~~20.11.3.206~~] 20.11.3.109 NMAC applies one year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC. In addition to the criteria listed in Table 1 in Subsection B of [~~20.11.3.206~~] 20.11.3.109 NMAC that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as required by [~~20.11.3.215~~] 20.11.3.118 NMAC for conformity determinations made on or after:

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

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

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

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, Part D, Subpart 1 areas), the interim emissions tests shall be satisfied as required by [~~20.11.3.216~~] 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS.

(3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO_x, as required by [~~20.11.3.216~~] 20.11.3.119 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 2002.

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

(a) the interim emissions tests required by [~~20.11.3.216~~] 20.11.3.119 NMAC; or

(b) the state shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by [~~20.11.3.215~~] 20.11.3.118 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) as described in Paragraph (1) of Subsection D of [~~20.11.3.206~~] 20.11.3.109 NMAC.

(5) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection D of [~~20.11.3.206~~] 20.11.3.109 NMAC, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS shall satisfy one of the following requirements:

(a) the interim emissions tests as required by [~~20.11.3.216~~] 20.11.3.119 NMAC;

(b) the budget test as required by [~~20.11.3.215~~] 20.11.3.118 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection D of [~~20.11.3.206~~] 20.11.3.109 NMAC; or

(c) the budget test as required by [~~20.11.3.215~~] 20.11.3.118 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

E. 8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area: Subsection E of [~~20.11.3.206~~] 20.11.3.109 NMAC applies one year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to Subsection D of 20.11.3.2 NMAC. In addition to the criteria listed in Table 1 in Subsection B of [~~20.11.3.206~~] 20.11.3.109 NMAC that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following.

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test shall be satisfied as required by [~~20.11.3.215~~] 20.11.3.118 NMAC for conformity determinations made on or after:

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

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

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

(2) Prior to Paragraph (1) of Subsection E of [~~20.11.3.206~~] 20.11.3.109 NMAC applying, the following test(s) shall be satisfied:

(a) if the 8-hour ozone nonattainment area covers the same geographic area as the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by [~~20.11.3.215~~] 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budgets in

the 1-hour ozone applicable implementation plan or implementation plan submission;

(b) if the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by [~~20.11.3.215~~] 20.11.3.118 NMAC for either:

(i) the 8-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by [~~20.11.3.202~~] 20.11.3.105 NMAC; or

(ii) the 1-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; if additional emissions reductions are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases, these emissions reductions shall come from within the 8-hour nonattainment area;

(c) if the 8-hour ozone nonattainment area covers a larger geographic area and encompasses the entire 1-hour ozone nonattainment or maintenance area(s):

(i) the budget test as required by [~~20.11.3.215~~] 20.11.3.118 NMAC for the portion of the 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; and

(ii) the interim emissions tests as required by [~~20.11.3.216~~] 20.11.3.119 NMAC for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state of a multi-state 1-hour nonattainment or maintenance area;

(d) if the 8-hour ozone nonattainment area partially covers a 1-hour ozone nonattainment or maintenance area(s):

(i) the budget test as required by [~~20.11.3.215~~] 20.11.3.118 NMAC for the portion of the 8-hour ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by [~~20.11.3.202~~] 20.11.3.105 NMAC; and

(ii) the interim emissions tests as required by [~~20.11.3.216~~] 20.11.3.119 NMAC, when applicable, for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state in a multi-state 1-hour nonattainment or maintenance area.

(3) Such an 8-hour ozone nonattainment area shall satisfy the interim emissions test for NO_x, as required by [~~20.11.3.216~~] 20.11.3.119 NMAC, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_x. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan or plan submission contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 2002. Prior to an adequate or approved NO_x motor vehicle emissions budget in the implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_x if the implementation plan contains an explicit NO_x motor vehicle emissions budget that is intended to act as a ceiling on future NO_x emissions, and the NO_x motor vehicle emissions budget is a net reduction from NO_x emissions levels in 1990.

(4) Notwithstanding Paragraph (1) and Paragraph (2) of Subsection E of [~~20.11.3.206~~] 20.11.3.109 NMAC, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS shall satisfy one of the following requirements:

(a) the budget test or interim emissions tests as required by [~~20.11.3.215~~] 20.11.3.118 NMAC and [~~20.11.3.216~~] 20.11.3.119 NMAC and as described in Paragraph (2) of Subsection E of [~~20.11.3.206~~] 20.11.3.109 NMAC;

(b) the budget test as required by [~~20.11.3.215~~]20.11.3.118 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS subject to the timing requirements of Paragraph (1) of Subsection E of [~~20.11.3.206~~] 20.11.3.109 NMAC; or

(c) the budget test as required by [~~20.11.3.215~~] 20.11.3.118 NMAC, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

F. CO nonattainment and maintenance areas: In addition to the criteria listed in Table 1 in Subsection B of [~~20.11.3.206~~] 20.11.3.109 NMAC that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations shall include a demonstration that the hot-spot, budget or emission reduction tests are satisfied as described in the following:

(1) FHWA/FTA projects in CO nonattainment or maintenance areas shall satisfy the hot-spot test required by Subsection A of [~~20.11.3.213~~] 20.11.3.116 NMAC at all times; until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects shall also satisfy the hot-spot test required by Subsection B of [~~20.11.3.213~~] 20.11.3.116 NMAC;

(2) in CO nonattainment and maintenance areas the budget test shall be satisfied as required by [~~20.11.3.215~~] 20.11.3.118 NMAC for conformity determinations made on or after:

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

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

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

(3) except as provided in Paragraph (4) of Subsection F of [~~20.11.3.206~~] 20.11.3.109 NMAC, in CO nonattainment areas the interim emissions tests shall be satisfied as required by [~~20.11.3.216~~] 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan;

(4) CO nonattainment areas that have not submitted a maintenance plan and

that are not required to submit an attainment demonstration (e.g. moderate CO areas with a design value of 12.7 ppm or less or not classified CO areas) shall satisfy one of the following requirements:

(a) the interim emissions tests required by [~~20.11.3.216~~]20.11.3.119 NMAC; or

(b) the state shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by [~~20.11.3.215~~]20.11.3.118 NMAC shall be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in Paragraph (2) of Subsection F of [~~20.11.3.206~~] 20.11.3.109 NMAC).

G. PM_{10} nonattainment and maintenance areas: In addition to the criteria listed in Table 1 in Subsection B of [~~20.11.3.206~~] 20.11.3.109 NMAC that are required to be satisfied at all times, in PM_{10} nonattainment and maintenance areas conformity determinations shall include a demonstration that the hot-spot, budget or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in PM_{10} non-attainment or maintenance areas shall satisfy the hot-spot test required by Subsection A of [~~20.11.3.213~~] 20.11.3.116 NMAC.

(2) In PM_{10} nonattainment and maintenance areas where a budget is submitted for the 24-hour PM_{10} NAAQS, the budget test shall be satisfied as required by [~~20.11.3.215~~] 20.11.3.118 NMAC for conformity determinations made on or after:

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

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

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

(3) Prior to Paragraph (2) of Subsection G of 20.11.3.109 NMAC applying, the budget test must be satisfied as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budget established for the revoked annual PM_{10} NAAQS, if such a budget exists.

[~~(3)~~](4) In PM_{10} nonattainment areas the interim emissions tests shall be satisfied as required by [~~20.11.3.216~~] 20.11.3.119 NMAC for conformity determinations made:

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

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

H. NO_2 nonattainment and maintenance areas: In addition to the criteria listed in Table 1 in Subsection B of [~~20.11.3.206~~] 20.11.3.109 NMAC that are required to be satisfied at all times, in NO_2 nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:

(1) In NO_2 nonattainment and maintenance areas the budget test shall be satisfied as required by [~~20.11.3.215~~] 20.11.3.118 NMAC for conformity determinations made on or after:

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

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

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

(2) In NO_2 nonattainment areas the interim emissions tests shall be satisfied as required by [~~20.11.3.216~~] 20.11.3.119 NMAC for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

I. 1997 $PM_{2.5}$ nonattainment and maintenance areas: In addition to the criteria listed in Table 1 of Subsection B of [~~20.11.3.206~~] 20.11.3.109 NMAC that are required to be satisfied at all times, in $PM_{2.5}$ nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in such 1997 $PM_{2.5}$ nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of [~~20.11.3.213~~] 20.11.3.116 NMAC;

(2) in such 1997 $PM_{2.5}$ nonattainment and maintenance areas the budget test shall be satisfied as required by [~~20.11.3.215~~] 20.11.3.118 NMAC for conformity determinations made on or after:

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

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

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

(3) in $PM_{2.5}$ nonattainment areas the interim emissions tests shall be satisfied as required by [~~20.11.3.216~~] 20.11.3.119 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

J. 2006 $PM_{2.5}$ NAAQS nonattainment and maintenance areas without 1997 $PM_{2.5}$ NAAQS motor vehicle emissions budgets for any portion of the 2006 $PM_{2.5}$ NAAQS area: In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such 2006 $PM_{2.5}$ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in such $PM_{2.5}$ nonattainment and maintenance areas shall satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC.

(2) In such $PM_{2.5}$ nonattainment and maintenance areas the budget test must be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS is adequate for transportation conformity purposes;

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

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

(3) In such $PM_{2.5}$ nonattainment areas the interim emissions tests shall be satisfied as required by 20.11.3.119 NMAC for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan for the 2006 $PM_{2.5}$ NAAQS and no adequate motor vehicle emissions budget from a

submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS.

K. 2006 $PM_{2.5}$ NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1997 $PM_{2.5}$ NAAQS that cover all or a portion of the 2006 $PM_{2.5}$ nonattainment area. In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such 2006 $PM_{2.5}$ nonattainment and maintenance areas conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in such $PM_{2.5}$ nonattainment and maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC.

(2) In such $PM_{2.5}$ nonattainment and maintenance areas the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS is adequate for transportation conformity purposes;

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

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

(3) Prior to Paragraph (2) of Subsection K of 20.11.3.109 NMAC applying, the following test(s) must be satisfied:

(a) if the 2006 $PM_{2.5}$ nonattainment area covers the same geographic area as the 1997 $PM_{2.5}$ nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission;

(b) if the 2006 $PM_{2.5}$ nonattainment area covers a smaller geographic area within the 1997 $PM_{2.5}$ nonattainment or maintenance area(s), the budget test as required by 20.11.3.118 NMAC for either:

(i) the 2006 $PM_{2.5}$ nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by 20.11.3.105 NMAC; or

(ii) the 1997 $PM_{2.5}$ nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission; if additional emissions reductions are necessary to meet the budget test for the 2006 $PM_{2.5}$ NAAQS in such cases, these emissions reductions must come from within the 2006 $PM_{2.5}$ nonattainment area;

(c) if the 2006 $PM_{2.5}$ nonattainment area covers a larger geographic area and encompasses the entire 1997 $PM_{2.5}$ nonattainment or maintenance area(s):

(i) the budget test as required by 20.11.3.118 NMAC for the portion of the 2006 $PM_{2.5}$ nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission; and the interim emissions tests as required by 20.11.3.119 NMAC for either: the portion of the 2006 $PM_{2.5}$ nonattainment area not covered by the approved or adequate budgets in the 1997 $PM_{2.5}$ implementation plan, the entire 2006 $PM_{2.5}$ nonattainment area, or the entire portion of the 2006 $PM_{2.5}$ nonattainment area within an individual state, in the case where separate 1997 $PM_{2.5}$ SIP budgets are established for each state of a multi-state 1997 $PM_{2.5}$ nonattainment or maintenance area; or

(ii) the budget test as required by 20.11.3.118 NMAC for the entire 2006 $PM_{2.5}$ nonattainment area using the approved or adequate motor vehicle emissions budgets in the applicable 1997 $PM_{2.5}$ implementation plan or implementation plan submission;

(d) if the 2006 $PM_{2.5}$ nonattainment area partially covers a 1997 $PM_{2.5}$ nonattainment or maintenance area(s):

(i) the budget test as required by 20.11.3.118 NMAC for the portion of the 2006 $PM_{2.5}$ nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by 20.11.3.105 NMAC; and

(ii) the interim emissions tests as required by 20.11.3.119 NMAC, when applicable, for either: the portion of the 2006 $PM_{2.5}$ nonattainment area not covered by the approved or adequate budgets in the 1997 $PM_{2.5}$ implementation plan, the entire 2006 $PM_{2.5}$ nonattainment area, or the entire portion of the 2006 $PM_{2.5}$ nonattainment area within an individual state, in the case where separate 1997 $PM_{2.5}$ SIP budgets are established for each state in a multi-state 1997 $PM_{2.5}$ nonattainment or maintenance area.

[~~J.~~] L. Areas with limited maintenance plans: Notwithstanding the other subsections of [~~20.11.3.206~~] 20.11.3.109 NMAC, an area is not required to satisfy the regional emissions analysis for [~~20.11.3.215~~] 20.11.3.118 NMAC or [~~20.11.3.216~~] 20.11.3.119 NMAC for a given pollutant and NAAQS if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in Table 1 of Subsection B of [~~20.11.3.206~~] 20.11.3.109 NMAC is still required, including the hot-spot requirements for projects in CO PM_{10} and $PM_{2.5}$ areas.

[~~K.~~] M. Areas with insignificant motor vehicle emissions: Notwithstanding the other subsections of [~~20.11.3.206~~] 20.11.3.109 NMAC, an area is not required to satisfy a regional emissions analysis for [~~20.11.3.215~~] 20.11.3.118 NMAC or [~~20.11.3.216~~] 20.11.3.119 NMAC for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in Table 1 in Subsection B of [~~20.11.3.206~~] 20.11.3.109 NMAC is still required, including regional emissions analyses for [~~20.11.3.215~~] 20.11.3.118 NMAC or [~~20.11.3.216~~] 20.11.3.119 NMAC for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO, PM_{10} and $PM_{2.5}$ areas in [~~20.11.3.213~~] 20.11.3.116 NMAC shall also be satisfied, unless EPA determines that the SIP also demonstrates that projects will not create new localized violations or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

[~~L.~~] N. Isolated rural non-

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

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of [~~20.11.3.207~~] 20.11.3.110 NMAC, [~~20.11.3.208~~] 20.11.3.111 NMAC, [~~20.11.3.209~~] 20.11.3.112 NMAC, [~~20.11.3.213~~] 20.11.3.116 NMAC, [~~20.11.3.214~~] 20.11.3.117 NMAC and Subsection D of [~~20.11.3.210~~]20.11.3.113 NMAC. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects shall also satisfy the requirements of Subsection B of [~~20.11.3.213~~] 20.11.3.116 NMAC.

(2) Isolated rural nonattainment and maintenance areas are subject to the budget or interim emissions tests as described in Subsections C through K of [~~20.11.3.206~~] 20.11.3.109 NMAC, with the following modifications:

(a) When the requirements of Subsection D of [~~20.11.3.203~~] 20.11.3.106 NMAC, [~~20.11.3.213~~] 20.11.3.116 NMAC, [~~20.11.3.215~~] 20.11.3.118 NMAC and [~~20.11.3.216~~] 20.11.3.119 NMAC apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP that are in the rural nonattainment or maintenance area. When the requirements of Subsection D of [~~20.11.3.203~~] 20.11.3.106 NMAC apply to isolated rural nonattainment and maintenance areas, references to "MPO" shall be taken to mean the state department of transportation.

(b) In isolated rural nonattainment and maintenance areas that are subject to [~~20.11.3.215~~] 20.11.3.118 NMAC, FHWA/FTA projects shall be consistent with motor vehicle emissions budget(s) for the years in the timeframe of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects shall satisfy one of the following requirements:

(i) [~~20.11.3.215~~] 20.11.3.118 NMAC;

(ii) [~~20.11.3.216~~] 20.11.3.119 NMAC (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of [~~20.11.3.216~~] 20.11.3.119 NMAC);

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

(c) The choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection [~~L~~]N of [~~20.11.3.206~~] 20.11.3.109 NMAC and the methodology used to meet the requirements of Item (iii) of Subparagraph (b) of Paragraph (2) of Subsection [~~L~~]N of [~~20.11.3.206~~] 20.11.3.109 NMAC shall be determined through the interagency consultation process required in Subparagraph (h) of Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC through which the relevant recipients of Title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the state air quality agency and the state DOT shall reach consensus about the option and methodology selected. EPA and DOT shall be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure in Subsection E of [~~20.11.3.202~~] 20.11.3.105 NMAC, which applies for any state air agency comments on a conformity determination.

[20.11.3.109 NMAC - Rn & A, 20.11.3.206 NMAC, 11/15/10]

[~~20.11.3.207~~] 20.11.3.110 CRITERIA AND PROCEDURES: LATEST PLANNING ASSUMPTIONS:

A. Except as provided in Subsection A of [~~20.11.3.207~~] 20.11.3.110 NMAC, the conformity determination, with respect to all other applicable criteria in [~~20.11.3.208~~] 20.11.3.111 NMAC through [~~20.11.3.216~~] 20.11.3.119 NMAC, shall be based upon the most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination shall satisfy the requirements of Subsections B through F of [~~20.11.3.207~~] 20.11.3.110 NMAC using the planning assumptions available at the time the conformity analysis begins as determined through the interagency consultation process required in Subparagraph (a) of Paragraph (1) of Subsection D of [~~20.11.202~~] 20.11.105 NMAC. The "time the conformity analysis begins" for a transportation plan or TIP determination is the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan or TIP on travel or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through the interagency consultation procedures described in [~~20.11.3.202~~] 20.11.3.105 NMAC.

B. Assumptions shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC. The conformity determination shall also be based on the latest assumptions about current and future background concentrations.

C. The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

D. The conformity determination shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

E. The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures that have already been implemented. This information shall be made as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

F. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by [~~20.11.3.202~~] 20.11.3.105 NMAC.

[20.11.3.110 NMAC - Rn & A, 20.11.3.207 NMAC, 11/15/10]

[~~20.11.3.208~~] 20.11.3.111 CRITERIA AND PROCEDURES: LATEST

EMISSIONS MODEL:

A. The conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans for Bernalillo county is used for the conformity analysis. When options are allowed by EPA, the TCTC, as part of the interagency consultation described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC, shall be responsible for determining the most appropriate emission estimation model to be used.

B. EPA shall consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period shall be no less than three months and no more than 24 months after notice of availability is published in the federal register.

(2) The length of the grace period shall depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period shall be longer than three months, EPA shall announce the appropriate grace period in the federal register.

C. Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the federal register notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analyses were begun during the grace period or before the federal register notice of availability, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.

[20.11.3.111 NMAC - Rn & A, 20.11.3.208 NMAC, 11/15/10]

[~~20.11.3.209~~] 20.11.3.112 CRITERIA AND PROCEDURES: CONSULTATION: Conformity shall be determined according to the consultation procedures in 20.11.3 NMAC and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR Part 450. Until the implementation plan revision required by 40 CFR 51.390 is fully approved by EPA, the conformity determination shall be made according to Subsection A and Subsection F of [~~20.11.3.202~~] 20.11.3.105 NMAC and the requirements of 23 CFR Part 450.

[20.11.3.112 NMAC - Rn & A, 20.11.3.209 NMAC, 11/15/10]

[~~20.11.3.210~~] 20.11.3.113 CRITERIA AND PROCEDURES: TIMELY IMPLEMENTATIONS OF TCMS:

A. The transportation plan, TIP or any FHWA/FTA project, which is not from a conforming plan and TIP, shall provide for the timely implementation of TCMs from the applicable implementation plan.

B. For transportation plans, this criterion is satisfied if the following two conditions are met.

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan, which are eligible for funding under Title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

C. For TIPs, this criterion is satisfied if the following conditions are met.

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Laws are on or ahead of the schedule established in the applicable implementation plan or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for federal funding intended for air quality improvement projects, e.g., the congestion mitigation and air quality improvement program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

D. For FHWA/FTA projects that are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

[20.11.3.113 NMAC - Rn, 20.11.3.210 NMAC, 11/15/10]

[~~20.11.3.211~~] 20.11.3.114 CRITERIA AND PROCEDURES: CURRENTLY CONFORMING TRANSPORTATION PLAN AND TIP: There shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval, or a project must meet the requirements in Subsection F of [~~20.11.3.201~~] 20.11.3.104 NMAC during the 12-month lapse grace period.

A. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP shall also lapse if conformity is not determined according to the frequency requirements specified in [~~20.11.3.201~~] 20.11.3.104 NMAC.

B. This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of 20.11.3 NMAC are satisfied.

[20.11.3.114 NMAC - Rn & A, 20.11.3.211 NMAC, 11/15/10]

[~~20.11.3.212~~] 20.11.3.115 CRITERIA AND PROCEDURES: PROJECTS FROM A TRANSPORTATION PLAN AND TIP:

A. The project shall come from a conforming plan and program: If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of Subsection B of [~~20.11.3.206~~] 20.11.3.109 NMAC for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of Subsection B of [~~20.11.3.212~~] 20.11.3.115 NMAC and from a conforming program if it meets the requirements of Subsection C of [~~20.11.3.212~~] 20.11.3.115 NMAC. Special provisions for TCMs in an applicable implementation plan are provided in Subsection D of [~~20.11.3.212~~] 20.11.3.115 NMAC.

B. A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) for projects that are required to be identified in the transportation plan in order to satisfy [~~20.11.3.203~~] 20.11.3.106 NMAC (content of transportation plans), the project is specifically included in the conforming transportation plan and the

project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) for projects that are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and shall not interfere with other projects specifically included in the transportation plan.

C. A project is considered to be from a conforming program if the following conditions are met:

(1) the project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those that were described in the TIP; and

(2) if the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures shall be obtained from the project sponsor or operator as required by Subsection A of [~~20.11.3.222~~] 20.11.3.125 NMAC in order for the project to be considered from a conforming program; any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

D. TCMs: This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

E. Notwithstanding the requirements of Subsections A, B and C of [~~20.11.3.212~~] 20.11.3.115 NMAC, a project shall meet the requirements of Subsection F of [~~20.11.3.201~~] 20.11.3.104 during the 12-month lapse grace period.

[20.11.3.115 NMAC - Rn & A, 20.11.3.212 NMAC, 11/15/10]

[~~20.11.3.213~~] 20.11.3.116 CRITERIA AND PROCEDURES: LOCALIZED CO, PM_{10} AND $PM_{2.5}$ VIOLATIONS (hot-spots):

A. Subsection A of [~~20.11.3.213~~] 20.11.3.116 NMAC applies at all times. The FHWA/FTA project shall not cause or contribute to any new localized CO, PM_{10} or $PM_{2.5}$ violations or increase the frequency or severity of any existing CO, PM_{10} or $PM_{2.5}$ violations, or delay timely attainment of any NAAQS or any required interim emission reductions or other milestones in CO, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas. This criterion is satisfied without a hot-spot analysis in PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas for FHWA/FTA projects that are not identified in Paragraph (1) of Subsection B of [~~20.11.3.220~~] 20.11.3.123 NMAC. This criterion is satisfied for all other FHWA/FTA projects in CO, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan no new local violations [~~shall~~] will be created and the severity or number of existing violations [~~shall~~] will not be increased as a result of the project, and the project has been included in a regional emissions analysis that meets applicable 20.11.3.118 NMAC or 20.11.3.119 NMAC requirements. The demonstration shall be performed according to the consultation requirements of Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC and the methodology requirements of [~~20.11.3.220~~] 20.11.3.123 NMAC.

B. Subsection B of [~~20.11.3.213~~]20.11.3.116 NMAC applies for CO nonattainment areas as described in Paragraph (1) of Subsection F of [~~20.11.3.206~~] 20.11.3.109 NMAC. Each FHWA/FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations shall be eliminated or reduced in severity and number as a result of the project. The demonstration shall be performed according to the consultation requirements of Subparagraph (a) of Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC and the methodology requirements of [~~20.11.3.220~~] 20.11.3.123 NMAC.

[20.11.3.116 NMAC - Rn & A, 20.11.3.213 NMAC, 11/15/10]

[~~20.11.3.214~~] 20.11.3.117 CRITERIA AND PROCEDURES: COMPLIANCE WITH PM_{10} and $PM_{2.5}$ CONTROL MEASURES: The FHWA/FTA project shall comply with any PM_{10} and $PM_{2.5}$ control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications and estimates for the project those control measures (for the purpose of limiting PM_{10} and $PM_{2.5}$ emissions from the construction activities or normal use and operation associated with the project) that are contained in the applicable implementation plan.

[20.11.3.117 NMAC - Rn, 20.11.3.214 NMAC, 11/15/10]

[~~20.11.3.215~~] 20.11.3.118 CRITERIA AND PROCEDURES: MOTOR VEHICLE EMISSIONS BUDGET:

A. The transportation plan, TIP and project not from a conforming transportation plan and TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in Subsections C through [~~L~~] N of [~~20.11.3.206~~] 20.11.3.109 NMAC. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in Subsection C of [~~20.11.3.215~~] 20.11.3.118 NMAC are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

B. Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each year for which the applicable (or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the timeframe of the transportation plan and conformity determination), for the last year of the timeframe of the conformity determination (as described under Subsection D of [~~20.11.3.203~~] 20.11.3.106 NMAC), and for any intermediate years within the timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are no more than 10 years apart, as follows:

(1) **Until a maintenance plan is submitted:**

(a) emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) shall be less than or equal to that years motor vehicle emissions budget(s); and

(b) emissions in years for which no motor vehicle emissions budget(s) are specifically established shall be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year; for example, emissions in years after the attainment year for which the implementation plan does not establish a budget shall be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

(2) **When a maintenance plan has been submitted:**

(a) emissions shall be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets; if the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance

plan, the demonstration of consistency with the motor vehicle emission budget(s) shall be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan; the interagency consultation process required by [~~20.11.3.202~~] 20.11.3.105 NMAC shall determine what shall be considered in order to make such a finding;

(b) for years after the last year of the maintenance plan, emissions shall be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan;

(c) if an approved or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years shall be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and

(d) for any analysis years before the last year of the maintenance plan, emissions shall be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

C. Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each pollutant or pollutant precursor in Subsection B of 20.11.3.2 NMAC for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

D. Consistency with the motor vehicle emissions budget(s) shall be demonstrated by including emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) shall be demonstrated with a regional emissions analysis that meets the requirements of [~~20.11.3.219~~] 20.11.3.122 NMAC and Subparagraph (a) of Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

(2) The regional emissions analysis may be performed for any years in the timeframe of the conformity determination (as described under Subsection D of [~~20.11.3.203~~] 20.11.3.106 NMAC) provided they are not more than 10 years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan and conformity determination) and the last year of the timeframe of the conformity determination. Emissions in years for which consistency with motor vehicle emissions budgets shall be demonstrated, as required in Subsection B of [~~20.11.3.215~~] 20.11.3.118 NMAC, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(3) When the timeframe of the conformity determination is shortened under Paragraph (2) of Subsection D of [~~20.11.3.203~~] 20.11.3.106 NMAC, the conformity determination shall be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends beyond the timeframe of the conformity determination).

E. Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans:

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans shall be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes and the adequacy finding is effective. However, motor vehicle emission budgets in submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

(2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of [~~20.11.3.215~~] 20.11.3.118 NMAC. Consistency with the previously established motor vehicle emissions budget(s) shall be demonstrated. If there are no previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emission tests required by [~~20.11.3.216~~] 20.11.3.119 NMAC shall be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination shall remain valid. Projects included in that transportation plan or TIP could still satisfy [~~20.11.3.211~~] 20.11.3.114 NMAC and [~~20.11.3.212~~] 20.11.3.115 NMAC, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA shall not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(a) the submitted control strategy implementation plan revision or maintenance plan was endorsed by the governor (or his designee) and was subject to a state public hearing;

(b) before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, state and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(c) the motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(d) the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment or maintenance (whichever is relevant to the given implementation plan submission);

(e) the motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(f) revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see 20.11.3.7 NMAC for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA shall review the state's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA shall document its consideration of such comments and responses in a letter to the state indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of [~~20.11.3.215~~] 20.11.3.118 NMAC are established by an implementation plan submittal that has not yet been approved

or disapproved by EPA, the MPO and DOT's conformity determinations shall be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget shall cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

F. Adequacy review process for implementation plan submissions: EPA will use the procedure listed in Paragraph (1) or Paragraph (2) of Subsection F of [~~20.11.3.215~~] 20.11.3.118 NMAC to review the adequacy of an implementation plan submission:

(1) When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan,

(a) EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy;

(b) the public will have a minimum of 30 days to comment on the adequacy of the implementation plan submission; if the complete implementation plan is not accessible electronically through the internet and a copy is requested within 15 days of the date of the website notice, the comment period will be extended for 30 days from the date that a copy of the implementation plan is mailed;

(c) after the public comment period closes, EPA will inform the state in writing whether EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the state process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under Subparagraph (c) of Paragraph (2) of Subsection F of [~~20.11.3.215~~] 20.11.3.118 NMAC;

(d) EPA will publish a federal register notice to inform the public of EPA's finding; if EPA finds the submission adequate, the effective date of this finding will be 15 days from the date the notice is published as established in the federal register notice, unless EPA is taking a final approval action on the SIP as described in Subparagraph (c) of Paragraph (2) of Subsection F of [~~20.11.3.215~~] 20.11.3.118 NMAC;

(e) EPA will announce whether the implementation plan submission is adequate or inadequate for use in transportation conformity on EPA's website; the website will also include EPA's response to comments if any comments were received during the public comment period;

(f) if after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2) of Subsection F of [~~20.11.3.215~~] 20.11.3.118 NMAC unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission; in all cases where EPA reverses its previous finding to a finding of inadequacy under Paragraph 1 of Subsection F of [~~20.11.3.215~~] 20.11.3.118 NMAC, such a finding will become effective immediately upon the date of EPA's letter to the state;

(g) if after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2) of Subsection F of [~~20.11.3.215~~] 20.11.3.118 NMAC.

(2) When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan,

(a) EPA's federal register notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy;

(b) the publication of the notice of proposed rulemaking will start a public comment period of at least 30 days;

(c) EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in Subparagraphs (c) through (e) of Paragraphs (1) of Subsection F of [~~20.11.3.215~~] 20.11.3.118 NMAC; if EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of EPA's approval in the federal register, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking; EPA will respond to comments received directly and review comments submitted through the state process and include the response to comments in the applicable docket.

[20.11.3.118 NMAC - Rn & A, 20.11.3.215 NMAC, 11/15/10]

[~~20.11.3.216~~] 20.11.3.119 CRITERIA AND PROCEDURES: INTERIM EMISSIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS:

A. The transportation plan, TIP and project not from a conforming transportation plan and TIP shall satisfy the interim emissions test(s) as described in Subsections C through [~~E~~] N of [~~20.11.3.206~~] 20.11.3.109 NMAC. This criterion applies to the net effect of the action (transportation plan, TIP or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

B. Ozone areas: The requirements of Subsection B of [~~20.11.3.216~~] 20.11.3.119 NMAC apply to all 1-hour ozone and 8-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met:

(1) in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of [~~20.11.3.219~~] 20.11.3.122 NMAC and Subsections G through J of [~~20.11.3.216~~] 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of [~~20.11.3.216~~] 20.11.3.119 NMAC:

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

(b) the emissions predicted in the "action" scenario are lower than:

(i) 1990 emissions by any nonzero amount, in areas for the 1-hour ozone NAAQS as described in Subsection C of [~~20.11.3.206~~] 20.11.3.109 NMAC; or

(ii) 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as described in Subsection D and Subsection E of [~~20.11.3.206~~] 20.11.3.109 NMAC;

(2) in marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of [~~20.11.3.219~~] 20.11.3.122 NMAC and Subsections G through J of [~~20.11.3.216~~] 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of [~~20.11.3.216~~] 20.11.3.119 NMAC:

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

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

(i) 1990 emissions, in areas for the 1-hour ozone NAAQS as described in Subsection C of [~~20.11.3.206~~] 20.11.3.109 NMAC; or

(ii) 2002 emissions, in areas for the 8-hour ozone NAAQS as described in Subsection D and Subsection E of [~~20.11.3.206~~] 20.11.3.109 NMAC.

C. CO areas: This criterion may be met:

(1) in moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas that are subject to CAA Section 187(a)(7) if a regional emissions analysis that satisfies the requirements of [~~20.11.3.219~~] 20.11.3.122 NMAC and Subsections G through J of [~~20.11.3.216~~] 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of [~~20.11.3.216~~] 20.11.3.119 NMAC:

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

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

(2) in moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of [~~20.11.3.219~~] 20.11.3.122 NMAC and Subsections G through J of [~~20.11.3.216~~] 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of [~~20.11.3.216~~] 20.11.3.119 NMAC:

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

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

D. PM_{10} and NO_2 areas: This criterion may be met in PM_{10} and NO_2 nonattainment areas if a regional emissions analysis that satisfies the requirements of [~~20.11.3.219~~] 20.11.3.122 NMAC and Subsections G through J of [~~20.11.3.216~~] 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of [~~20.11.3.216~~] 20.11.3.119 NMAC, one of the following requirements is met:

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

(2) the emissions predicted in the "action" scenario are not greater than baseline emissions; baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

E. $PM_{2.5}$ areas: This criterion may be met in $PM_{2.5}$ nonattainment areas if a regional emissions analysis that satisfies the requirements of [~~20.11.3.219~~] 20.11.3.122 NMAC and Subsections G through J of [~~20.11.3.216~~] 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of [~~20.11.3.216~~] 20.11.3.119 NMAC, one of the following requirements is met:

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

(2) the emissions predicted in the "action" scenario are not greater than:

(a) 2002 emissions, in areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS; or

(b) emissions in the most recent year for which EPA's Air Emissions Reporting Requirements (40 CFR Part 51, Subpart A) requires submission of on-road mobile source emissions inventories, as of the effective date of nonattainment designations for any $PM_{2.5}$ NAAQS other than the 1997 $PM_{2.5}$ NAAQS.

F. Pollutants: The regional emissions analysis shall be performed for the following pollutants:

(1) VOC in ozone areas;

(2) NO_x in ozone areas, unless the EPA administrator determines that additional reductions of NO_x would not contribute to attainment;

(3) CO in CO areas;

(4) PM_{10} in PM_{10} areas;

(5) VOC and NO_x in PM_{10} areas if the EPA regional administrator or the director of the air agency has made a finding that one or both of such precursor emissions from within the area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT;

(6) NO_x in NO_2 areas;

(7) $PM_{2.5}$ in $PM_{2.5}$ areas;

(8) re-entrained road dust in $PM_{2.5}$ areas only if the EPA regional administrator or the director of the air agency has made a finding that emissions from re-entrained road dust within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT;

(9) NO_x in $PM_{2.5}$ areas, unless the EPA regional administrator and the director of the state air agency have made a finding that emissions of NO_x from within the area are not a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT; and

(10) VOC, SO_2 and ammonia in $PM_{2.5}$ areas if the EPA regional administrator or the director of the state air agency has made a finding that any of such precursor emissions from within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT.

G. Analysis Years:

(1) The regional emissions analysis shall be performed for analysis years that are no more than 10 years apart. The first analysis year shall be no more than five years beyond the year in which the conformity determination is being made. The last year of the timeframe of the conformity determination (as described under Subsection D of [~~20.11.3.203~~] 20.11.3.106 NMAC) shall also be an analysis year.

(2) For areas using Subparagraph (a) of Paragraph (2) of Subsection B, Subparagraph (a) of Paragraph (2) of Subsection C, Paragraph (1) of Subsection D and Paragraph (1) of Subsection E of [~~20.11.3.216~~] 20.11.3.119 NMAC, a regional emissions analysis that satisfies the requirements of [~~20.11.3.219~~] 20.11.3.122 NMAC and Subsections G through J of [~~20.11.3.216~~] 20.11.3.119 NMAC would not be required for analysis years in which the transportation projects and planning assumptions in the action and "baseline" scenarios are exactly the same. In such a case, Subsection A of [~~20.11.3.216~~] 20.11.3.119 NMAC can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario for such analysis years.

(3) When the timeframe of the conformity determination is shortened under Paragraph (2) of Subsection D of [~~20.11.3.203~~] 20.11.3.106 NMAC, the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan.

H. "Baseline" scenario: The regional emissions analysis required by Subsections B through E of [~~20.11.3.216~~] 20.11.3.119 NMAC shall estimate the emissions that would result from the "baseline" scenario in each analysis year. The "baseline" scenario shall be defined for each of the analysis years. The "baseline" scenario is the future transportation system that shall result from current programs; including the following (except that exempt projects list in [~~20.11.3.223~~] 20.11.3.126

NMAC and projects exempt from regional emissions analysis as listed in [~~20.11.3.224~~] 20.11.3.127 NMAC need not be explicitly considered):

(1) all in-place regionally significant highway and transit facilities, services and activities;

(2) all ongoing travel demand management or transportation system management activities; and

(3) completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan or TIP; or have completed the NEPA process.

I. "Action" scenario: The regional emissions analysis required by Subsections B through E of [~~20.11.3.216~~] 20.11.3.119 NMAC shall estimate the emissions that would result from the "action" scenario in each analysis year. The "action" scenario shall be defined for each of the analysis years. The "action" scenario is the transportation system that would result from the implementation of the proposed action (MTP, TIP or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "action" scenario shall include the following (except that exempt projects listed in [~~20.11.3.223~~] 20.11.3.126 NMAC and projects exempt from regional emissions analysis as listed in [~~20.11.3.224~~] 20.11.3.127 NMAC need not be explicitly considered):

(1) all facilities, services and activities in the "baseline" scenario;

(2) completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which shall be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) all travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;

(4) the incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;

(5) completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

J. Projects not from a conforming transportation plan and TIP: For the regional emissions analysis required by Subsections B through E of [~~20.11.3.216~~] 20.11.3.119 NMAC, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "baseline" scenario shall include the project with its original design concept and scope, and the "action" scenario shall include the project with its new design concept and scope.

[20.11.3.119 NMAC - Rn & A, 20.11.3.216 NMAC, 11/15/10]

[~~20.11.3.217~~] 20.11.3.120 CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN FAILURES:

A. Disapprovals:

(1) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under Section 179(b)(1) of the CAA. No new transportation plan, TIP or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of Subsection F of [~~20.11.3.201~~] 20.11.3.104 NMAC during the 12-month lapse grace period may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP or project not in the first four years of the currently conforming transportation plan and TIP or that meets the requirements of Subsection F of [~~20.11.3.201~~] 20.11.3.104 NMAC during the 12-month lapse grace period may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to [~~20.11.3.215~~] 20.11.3.118 NMAC or approves the submission, and conformity to the implementation plan revision is determined.

(3) In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

B. Failure to submit and incompleteness: In areas where EPA notifies the state, MPO and DOT of the state's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under CAA Sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under Section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA regional administrator.

C. Federal implementation plans: If EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by [~~20.11.3.217~~] 20.11.3.120 NMAC because of that failure is removed.

[20.11.3.120 NMAC - Rn & A, 20.11.3.217 NMAC, 11/15/10]

[~~20.11.3.218~~] 20.11.3.121 REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY OTHER RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS.

A. Except as provided in Subsection B of [~~20.11.3.218~~] 20.11.3.121 NMAC, no recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project comes from the currently conforming transportation plan and TIP (or meets the requirements of Subsection F of [~~20.11.3.201~~] 20.11.3.104 NMAC during the 12-month lapse grace period), and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;

(2) the project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (or meets the requirements of Subsection F of [~~20.11.3.201~~] 20.11.3.104 NMAC during the 12-month lapse grace period), even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or

(3) a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of [~~20.11.3.215~~] 20.11.3.118 NMAC or [~~20.11.3.216~~] 20.11.3.119 NMAC for a project not from a conforming transportation plan and TIP).

B. In isolated rural nonattainment and maintenance areas subject to Subsection [~~E~~] N of [~~20.11.3.206~~] 20.11.3.109 NMAC, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope have not changed significantly; or

(2) a new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements [~~20.11.3.215~~] 20.11.3.118 NMAC or [~~20.11.3.216~~] 20.11.3.119 NMAC for projects not from a conforming transportation plan and TIP).

C. Notwithstanding Subsection A and Subsection B of [~~20.11.3.218~~] 20.11.3.121 NMAC, in nonattainment and maintenance areas subject to Subsection [~~F~~] L or Subsection [~~K~~] M of [~~20.11.3.206~~] 20.11.3.109 NMAC for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met for that pollutant/precursor and NAAQS:

(1) the project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or

(2) the project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope have not changed significantly.

[20.11.3.121 NMAC - Rn & A, 20.11.3.218 NMAC, 11/15/10]

[~~20.11.3.219~~] 20.11.3.122 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED EMISSIONS:

A. General requirements:

(1) The regional emissions analysis required by [~~20.11.3.215~~] 20.11.3.118 NMAC and [~~20.11.3.216~~] 20.11.3.119 NMAC for the transportation plan, TIP or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by [~~20.11.3.202~~] 20.11.3.105 NMAC. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects shall be estimated in accordance with reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

(2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:

(a) the regulatory action is already adopted by the enforcing jurisdiction;

(b) the project, program or activity is included in the applicable implementation plan;

(c) the control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of [~~20.11.3.215~~] 20.11.3.118 NMAC contains a written commitment to the project, program or activity by the agency with authority to implement it; or

(d) EPA has approved an opt-in to a federally enforced program, EPA has promulgated the program (if the control program is a federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date or not implement the program.

(4) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

(a) Persons or entities voluntarily committing to control measures shall comply with the obligations of such commitments.

(b) The conformity implementation plan revision required in 40 CFR 51.390 shall provide that written commitments to control measures that are not included in the transportation plan and TIP shall be obtained prior to a conformity determination and that such commitments shall be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of [~~20.11.3.216~~] 20.11.3.119 NMAC shall make the same assumptions in both the baseline and "action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, shall be consistent with the applicable implementation plan, unless modified after interagency consultation according to Subparagraph (a) of Paragraph (1) of

Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

B. Regional emissions analysis in serious, severe and extreme ozone nonattainment areas and serious CO nonattainment areas shall meet the requirements of Paragraphs (1) through (3) of Subsection B of [~~20.11.3.219~~] 20.11.3.122 NMAC if their metropolitan planning area contains an urbanized area population over 200,000.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations shall be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods and practices are available from DOT and shall be updated periodically. Agencies shall discuss these modeling procedures and practices through the interagency consultation process as required by Subparagraph (a) of Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC. Network-based travel models shall at a minimum satisfy the following requirements:

(a) network-based travel models shall be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than 10 years prior to the date of the conformity determination; model forecasts shall be analyzed for reasonableness and compared to historical trends and other factors, and the results shall be documented;

(b) land use, population, employment and other network-based travel model assumptions shall be documented and based on the best available information; future speeds shall be determined through interagency consultation as described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC;

(c) scenarios of land development and use shall be consistent with the future transportation system alternatives for which emissions are being estimated; the distribution of employment and residences for different transportation options shall be reasonable;

(d) a capacity-sensitive assignment methodology shall be used, and emissions estimates shall be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;

(e) zone-to-zone travel impedances used to distribute trips between origin and destination pairs shall be in reasonable agreement with the travel times that are estimated from final assigned traffic volumes and shall be determined through interagency consultation described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC; where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times shall also be used for modeling mode splits; and

(f) network-based travel models shall be reasonably sensitive to changes in the time(s), cost(s) and other factors affecting travel choices.

(2) Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.

(3) Highway performance monitoring system (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration shall be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures Subparagraph (a) of Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

C. Two-year grace period for regional emissions analysis requirements in certain ozone and CO areas: The requirements of Subsection B of [~~20.11.3.219~~] 20.11.3.122 NMAC apply to such areas or portions of such areas that have not previously been required to meet these requirements for any existing NAAQS two years from the following:

(1) the effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) the official notice by the census bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or

(3) the effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

D. In all areas not otherwise subject to Subsection B of [~~20.11.3.219~~] 20.11.3.122 NMAC, regional emissions analyses shall use those procedures described in Subsection B of [~~20.11.3.219~~] 20.11.3.122 NMAC if the use of those procedures has been the previous practice of the MPO. Otherwise, areas not subject to Subsection B of [~~20.11.3.219~~] 20.11.3.122 NMAC may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods shall also consider future economic activity, transit alternatives and transportation system policies.

E. PM_{10} from construction-related fugitive dust:

(1) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM_{10} nonattainment and maintenance areas with implementation plans that identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan and the dust-producing capacity of the proposed activities.

F. $PM_{2.5}$ from construction-related fugitive dust:

(1) For $PM_{2.5}$ areas in which the implementation plan does not identify construction-related fugitive $PM_{2.5}$ as a significant contributor to the nonattainment problem, the fugitive $PM_{2.5}$ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In $PM_{2.5}$ nonattainment and maintenance areas with implementation plans that identify construction-related fugitive $PM_{2.5}$ as a significant contributor to the nonattainment problem, the regional $PM_{2.5}$ emissions analysis shall consider construction-related fugitive $PM_{2.5}$ and

shall account for the level of construction activity, the fugitive $PM_{2.5}$ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

G. Reliance on previous regional emissions analysis:

(1) Conformity determinations for a new transportation plan or TIP may be demonstrated to satisfy the requirements of [~~20.11.3.215~~] 20.11.3.118 NMAC, *Criteria and Procedures: Motor Vehicle Emissions Budget*, or [~~20.11.3.216~~] 20.11.3.119 NMAC, *Criteria and Procedures: Interim Emissions in Areas Without Motor Vehicle Emissions Budgets*, without new regional emissions analysis if the previous regional emissions analysis also applies to the new plan or TIP. This requires a demonstration that:

(a) the new plan or TIP contains all projects that shall be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan;

(b) all plan and TIP projects that are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's or TIP's regional emissions at the time of the previous conformity determination;

(c) the design concept and scope of each regionally significant project in the new plan or TIP are not significantly different from that described in the previous transportation plan; and

(d) the previous regional emissions analysis is consistent with the requirements of [~~20.11.3.215~~] 20.11.3.118 NMAC (including that conformity to all currently applicable budgets is demonstrated) or [~~20.11.3.216~~] 20.11.3.119 NMAC, as applicable.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of [~~20.11.3.215~~] 20.11.3.118 NMAC or [~~20.11.3.216~~] 20.11.3.119 NMAC without additional regional emissions analysis if allocating funds to the project shall not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan the previous regional emissions analysis is still consistent with the requirements of [~~20.11.3.215~~] 20.11.3.118 NMAC (including that conformity to all currently applicable budgets is demonstrated) or [~~20.11.3.216~~] 20.11.3.119 NMAC, as applicable, and if the project is either:

(a) not regionally significant; or

(b) included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

(3) A conformity determination that relies on Subsection G of [~~20.11.3.219~~] 20.11.3.122 NMAC does not satisfy the frequency requirements of Subsection B or Subsection C of [~~20.11.3.201~~] 20.11.3.104 NMAC.

[20.11.3.122 NMAC - Rn & A, 20.11.3.219 NMAC, 11/15/10]

[~~20.11.3.220~~] 20.11.3.123 PROCEDURES FOR DETERMINING LOCALIZED CO, PM_{10} AND $PM_{2.5}$ CONCENTRATIONS (Hot-Spot Analysis):

A. CO hot spot analysis:

(1) The demonstrations required by [~~20.11.3.213~~] 20.11.3.116 NMAC (Criteria and Procedures: Localized CO, PM_{10} and $PM_{2.5}$ Violations) shall be based on quantitative analysis using the applicable air quality models, data bases and other requirements specified in 40 CFR Part 51, Appendix W (guideline on air quality models). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in [~~20.11.3.202~~] 20.11.3.105 NMAC and approved by the EPA regional administrator are used for:

(a) projects in or affecting locations, areas or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

(b) projects affecting intersections that are at level-of-service D, E or F, or those that shall change to level-of-service D, E or F because of increased traffic volumes related to the project;

(c) any project affecting one or more of the top three intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan or which are identified through the interagency consultation process as described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC; and

(d) any project affecting one or more of the top three intersections in the nonattainment or maintenance area with the worst level of service, as identified in the applicable implementation plan or which are identified through the interagency consultation process as described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

(2) In cases other than those described in Paragraph (1) of Subsection A of [~~20.11.3.220~~] 20.11.3.123 NMAC, the demonstrations required by [~~20.11.3.213~~] 20.11.3.116 NMAC may be based on either:

(a) quantitative methods that represent reasonable and common professional practice as determined through the interagency consultation process, described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC; or

(b) a qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of [~~20.11.3.213~~] 20.11.3.116 NMAC are met.

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that Subsection A of [~~20.11.3.213~~] 20.11.3.116 NMAC is met without further hot-spot analysis for any project described in Paragraphs (1) and (2) of Subsection A of [~~20.11.3.220~~] 20.11.3.123 NMAC based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given CO nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

B. PM_{10} and $PM_{2.5}$ hot-spot analyses:

(1) The hot-spot demonstration required by [~~20.11.3.213~~] 20.11.3.116 NMAC shall be based on quantitative analysis methods for the following types of projects:

(a) new highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;

(b) projects affecting intersections that are at level-of-service D, E, or F with a significant number of diesel vehicles, or those that will change to level-of-service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;

(c) new bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location;

(d) expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location; and

(e) projects in or affecting locations, areas, or categories of sites which are identified in the PM_{10} or $PM_{2.5}$ applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

(2) Where quantitative analysis methods are not available, the demonstration required by [~~20.11.3.213~~] 20.11.3.116 NMAC for projects described in Paragraph (1) of Subsection B of [~~20.11.3.220~~] 20.11.3.123 NMAC shall be based on a qualitative consideration of local factors.

(3) DOT, in consultation with

EPA, may also choose to make a categorical hot-spot finding that [~~20.11.3.213~~] 20.11.3.116 NMAC is met without further hot-spot analysis for any project described in Paragraph (1) of Subsection B of [~~20.11.3.220~~] 20.11.3.123 NMAC based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given $PM_{2.5}$ or PM_{10} nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

(4) The requirements for quantitative analysis contained in Subsection B of [~~20.11.3.220~~] 20.11.3.123 NMAC shall not take effect until EPA releases modeling guidance on this subject and announces in the federal register that these requirements are in effect.

C. General requirements:

(1) Estimated pollutant concentrations shall be based on the total emissions burden that may result from the implementation of the project, summed together with future background concentrations. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

(2) Hot-spot analyses shall include the entire project, and may be performed only after the major design features that shall significantly impact concentrations have been identified. The future background concentration shall be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors as determined through the interagency consultation process described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

(3) Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses as determined through the interagency consultation process described in Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC.

(4) CO, PM_{10} or $PM_{2.5}$ mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor or operator to implement such measures, as required by Subsection A of [~~20.11.3.222~~] 20.11.3.125 NMAC.

(5) CO, PM_{10} and $PM_{2.5}$ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site that is affected by construction-related activities shall be considered separately through the interagency consultation process described in Paragraph (1) of Subsection B of [~~20.11.3.202~~] 20.11.3.105 NMAC, using established guideline methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

[20.11.3.123 NMAC - Rn & A, 20.11.3.220 NMAC, 11/15/10]

[~~20.11.3.221~~] 20.11.3.124 USING THE MOTOR VEHICLE EMISSIONS BUDGET IN THE APPLICABLE IMPLEMENTATION PLAN (OR IMPLEMENTATION PLAN SUBMISSION):

A. In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment or maintenance requirement and explicitly states an intent that some or all of this additional amount shall be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) emissions from all sources shall be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) emissions from all sources shall result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year shall be lower than needed to demonstrate attainment; or

(3) emissions shall be lower than needed to provide for continued maintenance.

B. A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades.

C. If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

D. If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs shall collectively make a conformity determination for the entire nonattainment area.

[20.11.3.124 NMAC - Rn, 20.11.3.221 NMAC, 11/15/10]

[~~20.11.3.222~~] 20.11.3.125 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES:

A. Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Laws, FHWA or FTA shall obtain from the project sponsor or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures that are identified as conditions for NEPA process completion with respect to local $PM_{10,}$ $PM_{2.5}$ or CO impacts. Before a conformity determination is made, written commitments shall also be obtained for project-level mitigation or control measures that are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by [~~20.11.3.215~~] 20.11.3.118 NMAC (motor vehicle emissions budget) and [~~20.11.3.216~~] 20.11.3.119 NMAC (interim emissions in areas without motor vehicle emissions budgets) or used in the project-level hot-spot analysis required by [~~20.11.3.213~~] 20.11.3.116 NMAC.

B. Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of such commitments.

C. The implementation plan revision required in 40 CFR 51.390 shall provide that written commitments to mitigation measures shall be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

D. If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of [~~20.11.3.213~~] 20.11.3.116 NMAC, emission budget requirements of [~~20.11.3.215~~] 20.11.3.118 NMAC, and interim emissions requirements of [~~20.11.3.216~~] 20.11.3.119 NMAC are satisfied without the mitigation or control

measure, and so notifies the agencies involved in the interagency consultation process required under [~~20.11.3.202~~] 20.11.3.105 NMAC. The MPO and DOT shall find that the transportation plan and TIP still satisfy the applicable requirements of [~~20.11.3.215~~]20.11.3.118 NMAC or [~~20.11.3.216~~] 20.11.3.119 NMAC and that the project still satisfies the requirements of [~~20.11.3.213~~] 20.11.3.116 NMAC, and therefore that the conformity determinations for the transportation plan, TIP and project are still valid. This finding is subject to the applicable public consultation requirements in Subsection F of [~~20.11.3.202~~] 20.11.3.105 NMAC for conformity determinations for projects.

[20.11.3.125 NMAC - Rn & A, 20.11.3.222 NMAC, 11/15/10]

[~~20.11.3.223~~] 20.11.3.126 EXEMPT PROJECTS: Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 2 of [~~20.11.3.223~~] 20.11.3.126 NMAC are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of [~~20.11.3.223~~] 20.11.3.126 NMAC is not exempt if the MPO in consultation with other agencies (see Subparagraph (c) of Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC), the EPA and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs shall ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

TABLE 2. EXEMPT PROJECTS

SAFETY

Railroad/highway crossing
Projects that correct, improve or eliminate a hazardous location or feature
Safer non-federal-aid system roads
Shoulder improvements
Increasing sight distance
Highway safety improvement program implementation
Traffic control devices and operating assistance other than signalization projects
Railroad/highway crossing warning devices
Guardrails, median barriers, crash cushions
Pavement resurfacing or rehabilitation
Pavement marking
Emergency relief (23 U.S.C. 125)
Fencing
Skid treatments
Safety roadside rest areas
Adding medians
Truck climbing lanes outside the urbanized area
Lighting improvements
Widening narrow pavements or reconstructing bridges (no additional travel lanes)
Emergency truck pullovers

MASS TRANSIT

Operating assistance to transit agencies
Purchase of support vehicles
Rehabilitation of transit vehicles[1]
Purchase of office, shop and operating equipment for existing facilities
Purchase of operating equipment for vehicles (e.g., radios, fare boxes, lifts, etc.)
Construction or renovation of power, signal and communications systems
Construction of small passenger shelters and information kiosks
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals and ancillary structures)
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet[1]
Construction of new bus or rail storage/ maintenance facilities categorically excluded in 23 CFR Part 771

AIR QUALITY

Continuation of ride-sharing and van-pooling promotion activities at current levels
Bicycle and pedestrian facilities

OTHER

Specific activities which do not involve or lead directly to construction, such as:
Planning and technical studies
Grants for training and research programs
Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
Federal-aid systems revisions
Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action
Noise attenuation
Emergency or hardship advance land acquisitions 23 CFR Part 710.503
Acquisition of scenic easements
Plantings, landscaping, etc.
Sign removal
Directional and informational signs
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures or facilities)
Repair of damage caused by natural disasters, civil unrest or terrorist acts, except projects involving substantial functional, locational or capacity changes

Note: [1]In PM_{10} and $PM_{2.5}$ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

[20.11.3.126 NMAC - Rn & A, 20.11.3.223 NMAC, 11/15/10]

[~~20.11.3.224~~]20.11.3.127 PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES: Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 3 of [~~20.11.3.224~~] 20.11.3.127 NMAC are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO, $PM_{2.5}$ or PM_{10} concentrations shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of [~~20.11.3.224~~] 20.11.3.127 NMAC is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see Subparagraph (c) Paragraph (1) of Subsection D of [~~20.11.3.202~~] 20.11.3.105 NMAC), the EPA and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:

TABLE 3. PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

Intersection channelization projects
Intersection signalization projects at individual intersections
Interchange reconfiguration projects
Changes in vertical and horizontal alignment
Truck size and weight inspection stations
Bus terminals and transfer points

[20.11.3.127 NMAC - Rn & A, 20.11.3.224 NMAC, 11/15/10]

[~~20.11.3.225~~] 20.11.3.128 TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS: Traffic signal synchronization projects may be approved, funded and implemented without satisfying the requirements of 20.11.3 NMAC. However, all subsequent regional emissions analyses required by [~~20.11.3.215~~] 20.11.3.118 NMAC and [~~20.11.3.216~~] 20.11.3.119 NMAC for transportation plans, TIPs or projects not from a conforming plan and TIP shall include such regionally significant traffic signal synchronization projects.

[20.11.3.128 NMAC - Rn & A, 20.11.3.225 NMAC, 11/15/10]

~~**[20.11.3.226 APPLICABLE LAW:** The federal conformity rules under 40 CFR Part 93 Subpart A, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of CAA Section 176(c) until such time as this conformity implementation plan revision is approved by EPA. Following EPA approval of this revision to the applicable implementation plan (or a portion thereof), the approved~~

~~(or approved portion of the) criteria and procedures in 20.11.3 NMAC shall govern conformity determinations and the federal conformity regulations contained in 40 CFR Part 93 shall apply only for the portion, if any, of 20.11.3 NMAC conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until 20.11.3 NMAC is adopted.~~]
[7/1/98; 20.11.3.226 NMAC - Rn, 20 NMAC 11.03.II.1-27, 6/1/02; A, 6/13/05; Repealed, 11/15/10]

[~~20.11.3.227~~] 20.11.3.129 SPECIAL EXEMPTIONS FROM CONFORMITY REQUIREMENTS FOR PILOT PROGRAM AREAS: EPA and DOT may exempt no more than six areas for no more than three years from certain requirements of 20.11.3 NMAC if these areas are selected to participate in a conformity pilot program and have developed alternative requirements that have been approved by EPA as an implementation plan revision in accordance with 40 CFR 51.390. For the duration of the pilot program, areas selected to participate in the pilot program shall comply with the conformity requirements of the pilot area's implementation plan revision for 40 CFR 51.390 and all other requirements in 40 CFR parts 51 and 93 that are not covered by the pilot area's implementation plan revision for 40 CFR 51.390. The alternative conformity requirements in conjunction with any applicable state or federal conformity requirements shall be proposed to fulfill all of the requirements of and achieve results equivalent to or better than Section 176(c) of the Clean Air Act. After the three-year duration of the pilot program has expired, areas will again be subject to all of the requirements of 20.11.3 NMAC and 40 CFR Part 51, Subpart T, or to the requirements of any implementation plan revision that was previously approved by EPA in accordance with 40 CFR 51.390.
[20.11.3.129 NMAC - Rn, 20.11.3.227 NMAC, 11/15/10]

20.11.3.130 to 20.11.3.199 [Reserved]

20.11.3.200 to 20.11.3.227 [Reserved]
[Sections 200-227 renumbered to Sections 103-129, 11/15/10]

20.11.3.228 to 20.11.3.389 [Reserved]

20.11.3.390 APPLICABLE LAW: The federal conformity rules under 40 CFR Part 93 Subpart A, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of CAA Section 176(c) until such time as this conformity implementation plan revision is approved by EPA. Following EPA approval of this revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) criteria and procedures in 20.11.3 NMAC shall govern conformity determinations and the federal conformity regulations contained in 40 CFR Part 93 shall apply only for the portion, if any, of 20.11.3 NMAC conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until 20.11.3 NMAC is adopted.
[20.11.3.390 NMAC - N, 11/15/10]

NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

This is an amendment to 16.34.4 NMAC, Section 14 effective November 14, 2010.

16.34.4.14 STUDENT PERMIT LICENSE:

A. Upon receipt of a complete student registration form and applicable fee, which shall be received in the board office within fifteen days of date of registration, the board will issue a student permit license and permit license number. The student permit license authorizes the holder to practice course related skills in an approved school and perform services on the public only after fifteen percent of the required hours for graduation from the course of study are accrued.

B. Student permit licenses are valid for 90 days following completion of graduation requirements. The student permit licenses will be issued to the student upon graduation of course of study by a school official and can be used to enter a licensed establishment and provide all services in the applicable course of study under the constant supervision of a licensee of the board, in the applicable course of study. The student permit license holder may not assume supervisory or managerial responsibilities of a licensed establishment at any time. The student permit license is valid for 90 days while waiting to test. Once the 90 days has expired the student permit license must be turned into the state board office and the student must terminate working at the licensed establishment. It is the responsibility of the licensed establishment to monitor the expiration of the student permit license. The student permit license must be turned into the board with initial licensure application as part of the application process. No extensions will be given after the 90 days has terminated. The student must reapply if the course of study goes beyond one year.

C. Student [~~permits~~] permit licenses are the property of the board and must be returned to the board office with the notice of termination or official transcript of credit by the school. Additional requirements applicable to student permits are found in Subsection A, Paragraph 7 of 16.34.8.13 NMAC of these rules.
[16.34.4.14 NMAC - Rp 16 NMAC 34.4.14, 06-16-01; A, 07-16-04; A, 10-04-07; A, 04-12-10; A, 11-14-10]

NEW MEXICO DEPARTMENT OF HEALTH
PUBLIC HEALTH DIVISION

TITLE 7 HEALTH
CHAPTER 30 FAMILY AND CHILDREN HEALTH CARE SERVICES
PART 10 AWARD OF FUNDS FROM SAVE OUR CHILDREN'S SIGHT FUND

7.30.10.1 ISSUING AGENCY: New Mexico Department of Health.
[7.30.10.1 NMAC - N, 10/29/2010]

7.30.10.2 SCOPE: This rule applies to any parent (guardian) notified by the school that the results of vision screening of his/her child indicate the need for further evaluation, and it establishes criteria for applying for financial support from the save our children's sight fund and award of these funds.
[7.30.10.2 NMAC - N, 10/29/2010]

7.30.10.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to Sections 9-7-6, 24-1-31, 24-1-32 and 22-13-30 NMSA 1978.
[7.30.10.3 NMAC - N, 10/29/2010]

7.30.10.4 DURATION: Permanent.
[7.30.10.4 NMAC - N, 10/29/2010]

7.30.10.5 EFFECTIVE DATE: October 29, 2010 unless a later date is cited in the history at the end of a section.
[7.30.10.5 NMAC - N, 10/29/2010]

7.30.10.6 OBJECTIVE: To establish a mechanism by which a parent (guardian) of eligible New Mexico students can apply to the save our children's sight fund.
[7.30.10.6 NMAC - N, 10/29/2010]

7.30.10.7 DEFINITIONS:

A. **"Administering agent"** means the office of school and adolescent health of the New Mexico department of health or its successor.

B. **"Eligible student"** means a student whose parent (guardian) may apply to the save our children's sight fund because the student's vision screening indicates the need for further evaluation

and the student is not already covered by health insurance for a comprehensive eye examination.

C. **"Eyewear"** means equipment prescribed for the treatment of vision limitations including but not limited to polycarbonate lenses and frames and contact lenses.

D. **"Funds"** means money from save our children's sight fund.

E. **"Participating provider"** means any optometrist, ophthalmologist or optician with a provider agreement to supply comprehensive eye examinations, prescribed treatment eyewear, or both for students awarded funds.
[7.30.10.7 NMAC - N, 10/29/2010]

7.30.10.8 ELIGIBILITY FOR FUNDS: Regardless of family income, any parent (guardian) of an eligible student as defined by Subsection B of 7.30.10.7 NMAC may apply for funds for the following expenses:

A. cost of a comprehensive eye examination by a participating optometrist or ophthalmologist through referral;

B. cost of polycarbonate lenses and frames for eyeglasses or for contact lenses; and

C. cost of replacement insurance for lost or broken lenses.
[7.30.10.8 NMAC - N, 10/29/2010]

7.30.10.9 APPLICATION FOR FUNDS:

A. Application for funds shall be made by parent (guardian) of an eligible student to the administering agent via mail, email, fax or hard copy using the application and referral forms approved by the administering agent.

B. Applicants shall provide the administering agent with proof of lack of insurance coverage for a comprehensive eye examination when applying for funds. A copy of insurance benefits which demonstrate the insurance does not include a comprehensive eye examination or a sworn affidavit attesting to lack of coverage shall be acceptable.
[7.30.10.9 NMAC - N, 10/29/2010]

7.30.10.10 REVIEW OF APPLICATIONS:

A. The administering agent or its designee shall review applications for referral criteria and verification of insurance status to establish client eligibility for award of funds.

B. The administering agent shall approve award of funds on the basis of client eligibility and availability of funds according to the agent's established program guidelines for distribution of the funds.
[7.30.10.10 NMAC - N, 10/29//2010]

7.30.10.11 DISTRIBUTION OF FUNDS:

A. Distribution of funds shall follow the reimbursement schedule for costs designated in participating provider agreements established with the administering agent.

B. Reimbursement costs for polycarbonate lenses and contact lenses as described in 7.30.10.8 NMAC shall follow criteria as defined by medicaid services rules (Subsection G of 8.310.6.12 NMAC and Subsection C of 8.310.6.14 NMAC).

C. If funds become exhausted, the administering agent shall maintain a waiting list of eligible applicants.

D. Services purchased with awarded funds shall be purchased within the state of New Mexico unless the need to purchase services elsewhere is documented and approved by the administering agent.

E. Funds shall be distributed by the administering agent in voucher form for direct payment to the participating provider for services delivered to approved applicants in accordance with participating provider agreements.

F. The award of funds shall be limited to one-time use per student per school year.
[7.30.10.11 NMAC - N, 10/29/2010]

HISTORY of 7.30.10 NMAC: [RESERVED]

NEW MEXICO DEPARTMENT OF HEALTH
PUBLIC HEALTH DIVISION

TITLE 7 HEALTH
CHAPTER 30 FAMILY AND CHILDREN HEALTH CARE SERVICES
PART 11 VISION SCREENING TEST STANDARDS FOR STUDENTS

7.30.11.1 ISSUING AGENCY: New Mexico Department of Health.
[7.30.11.1 NMAC - N, 10/29/2010

7.30.11.2 SCOPE: This rule applies to vision screeners and students enrolled in public schools in New Mexico in pre-kindergarten, kindergarten, first grade and third grade and transfer and new students in those grades unless a parent (guardian) affirmatively prohibits the vision screening.
[7.30.11.2 NMAC - N, 10/29/2010]

7.30.11.3 STATUTORY AUTHORITY: This rule is adopted pursuant to Sections 9-7-6, 24-1-32 and 22-13-30 NMSA 1978.
[7.30.11.3 NMAC - N, 10/29/2010]

7.30.11.4 DURATION: Permanent.
[7.30.11.4 NMAC - N, 10/29/2010]

7.30.11.5 EFFECTIVE DATE: October 29, 2010 unless a later date is cited in the history at the end of a section.
[7.30.11.5 NMAC - N, 10/29/2010]

7.30.11.6 OBJECTIVE: To establish standards for required vision screening of students in New Mexico public schools.
[7.30.11.6 NMAC - N, 10/29/2010]

7.30.11.7 DEFINITIONS:

A. **"The department"** means New Mexico department of health.

B. **"Student"** means an individual enrolled in a New Mexico public school in one of the following grades: pre-kindergarten, kindergarten, first or third.

C. **"Photoscreening"** means a method of vision screening with a machine with automated technique that uses red reflex of the eye to screen for eye problems and produces immediate readable results and timely report of the results thereafter.

D. **"Vision pre-screening observation"** means any observation listed in New Mexico vision screening standards that requires follow-up as a potential result of vision limitation.

E. **"Vision screening standards"** means the department's approved manner of vision screening for students in New Mexico, established pursuant to report from an advisory committee appointed by the secretary of the department.

F. **"Vision screening test"** means any vision test administered in accordance with vision screening standards in New Mexico schools.

G. **"Vision screener"** means a school nurse or the nurse's designee, a primary care health provider or a lay screener trained to administer a vision screening test to students in New Mexico schools in accordance with vision screening standards.
[7.30.11.7 NMAC - N, 10/29/2010]

7.30.11.8 REQUIREMENTS:

A. **Target population for required screening:** All public school students enrolled in pre-kindergarten, kindergarten, first grade and third grade including new students and transfer students in those grades shall have a vision screening test administered unless the parent (guardian) affirmatively prohibits the screening.

B. **Parental notification:** The parent (guardian) shall be provided notification of school vision screening to include the date and location of screening. The parent (guardian) shall have an opportunity to prohibit the screening for the student.

C. **Vision screener:** A

school nurse or the nurse's designee, a primary care health provider or a trained lay eye screener shall administer the screening tests.

D. **Vision screening standards:**

(1) Vision screening standards for pre-screening observations and screening tests in the school setting are established by the department and shall be reviewed periodically as determined by the secretary of the department.

(2) Vision pre-screening observation standards shall include but are not limited to eye appearance and visual behaviors.

(a) Eye appearance observations shall include at a minimum the following:

(i) cloudy or milky appearance,

(ii) keyhole pupil,

(iii) sustained eye turn inward or outward,

(iv) droopy eyelids,

(v) absence of eyes moving together,

(vi) abnormal pupil constriction or dilation,

(vii) difference in size and shape of eyes, and

(viii) excessive tearing,

(ix) jerky eye movements (nystagmus).

(b) Visual behavior observations shall include at a minimum the following:

(i) inconsistent visual behavior,

(ii) visually inattentive or uninterested,

(iii) difficulty sustaining eye contact,

(iv) holding objects close to face,

(v) bending close to view objects,

(vi) tilting head,

(vii) staring at lights and ceiling fans,

(viii) high sensitivity to room light or sunlight,

(ix) appearing to look beside, under or above an object or person,

(x) bumping into things, and

(xi) tripping over objects.

(3) Vision screening test standards in the school setting for the target population shall include but is not limited to distance visual acuity, ocular alignment, and color vision. Ocular alignment and color vision testing are required only once in any one of the targeted grades.

(4) Referral criteria for the required screening tests shall be in alignment with failure to meet the following test passing criteria:

(a) distance visual acuity passing criteria shall be identification of test line 20/40 for 3-5 years of age and 20/30 for 6 years of age and older;

(b) ocular alignment passing criteria shall be identification of the testing tool object; and

(c) color vision passing criteria shall be meeting passing criteria for any standard color vision test.

E. **Screening methods:** Acceptable screening methods include traditional screening and photoscreening as outlined in the department approved vision screening standards. These methods shall adhere to the testing tools approved and adopted for use in the most current vision screening standards.

F. **Results notification:** Based on the school-based vision screening test results, the student's school shall notify the student's parent (guardian) if the need for further evaluation is indicated and shall provide information on application to the save our children's sight fund (7.30.10 NMAC).

G. **Referral process:** A standardized referral form approved by the administering agent of the save our children's sight fund shall be used for referring a student for further evaluation. The form shall include screening results held in the student's school health record. Any information resulting from a comprehensive vision evaluation reported back to the school on this referral form may be used for the purpose of completing the school health record and to collect information to evaluate the school vision screening program. Information on this form shall be treated as confidential medical information, and its use shall comply with all applicable federal and state laws.

[7.30.11.8 NMAC - N 10/29/2010]

HISTORY of 7.30.11 NMAC: [RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

Explanatory paragraph. This is an amendment to 8.200.410 NMAC, Section 11, which will be effective November 1, 2010. The Medical Assistance Division (MAD) is amending Subsection B, Paragraph (1), Subparagraph (k) and Paragraph (2) Subparagraph (l) to include Afghan and Iraqi Refugees as qualified aliens who are exempt from being barred from Medicaid eligibility for a period of five years per Section 8120 of Pub. L. 111-118, Department of Defense Appropriations Act of 2010.

8.200.410.11 CITIZENSHIP: To be eligible for medicaid, an individual must be a citizen of the United States; or an alien who entered the United States prior to August 22, 1996, as one of the classes of aliens described in Subsection A of 8.200.410.11 NMAC or an alien who entered the United States as a qualified alien on or after August 22, 1996, and who has met the five-year bar listed in Subsection B of 8.200.410.11 NMAC.

B. **Aliens who entered the United States on or after August 22, 1996:**

(1) Aliens who entered the United States on or after August 22, 1996, are barred from medicaid eligibility for a period of five years, other than emergency services (under category 85). The five-year bar begins on the date of the alien's entry into the United States with a status of qualified alien. The following classes of qualified aliens are exempt from the five-year bar.

(k) Afghan and Iraqi special immigrants under section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010.

(2) Qualified alien: A "qualified alien", for the purpose of this regulation, is an alien, who at the time the alien applies for, receives, or attempts to receive a federal public benefit, is:

(l) Afghan and Iraqi special immigrants under section 8120 of Pub. L. 111-118 of the Department of Defense Appropriations Act, 2010.

[2/1/95; 1/1/97; 4/1/98; 8.200.410.11 NMAC - Rn, 8 NMAC 4.MAD.412 & A, 7/1/03; A/E, 10/1/09; A, 11/1/10]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.420 NMAC, Sections 12 and 13, effective November 1, 2010.

8.200.420.12 THIRD PARTY LIABILITY: The New Mexico medicaid program (medicaid) is the payor of last resort. If resources are available from a third party, these health care resources must be used first. To ensure that these resource alternatives are used, an applicant/recipient assigns his/her right to medical support and payments to the human services department (HSD) and cooperates with the medical assistance division (MAD) in identifying, obtaining, and collecting medical support and medical care payments as a condition of eligibility. This section describes third party liability, HSD's responsibilities in identifying and collecting medical support and payments, and a recipient's responsibility to cooperate with HSD in obtaining medical support and medical payments.

A. **Required third party liability information:** During the

initial determination or [~~redetermination~~] recertification of eligibility for medical assistance, the [~~income support specialist (ISS)~~] ISD caseworker must obtain the necessary information from applicants/recipients to complete the third party liability (TPL) inquiry form.

(1) HSD is required to take all reasonable measures to ascertain the legal liability of third parties, including health insurers in paying for the medical services furnished to medicaid recipients [42 CFR 433.138(a)].

(2) HSD uses the information collected at the time of any [~~determination/redetermination~~] certification/recertification of eligibility for medical assistance to pursue claims against third parties.

B. **Availability of health insurance:** If an applicant/recipient has health insurance, the [~~ISS~~] ISD caseworker must collect all relevant information, including name and address of the insurance company; individuals covered by the policy; effective dates; covered services; and appropriate policy numbers.

(1) Applicants/recipients with health insurance coverage or coverage by a health maintenance organization (HMO) or other managed care plan (plan) must be given a copy of the TPL recipient information letter.

(2) If there is an absent parent, the [~~ISS~~] ISD caseworker may request the absent parent's social security number.

(3) The [~~ISS~~] ISD caseworker must determine if absent parents, relatives, applicants or any members of the household are employed and have health insurance coverage.

C. **Recipients with health insurance coverage:** An applicant/recipient is expected to be aware of his/her available health insurance coverage. An applicant/recipient must inform health care providers of this coverage and provide special billing forms for providers, if required. An applicant/recipient must also report change to or termination of insurance coverage to the local county income support division (ISD) office. If an applicant/recipient has health coverage through an HMO or plan, payment from medicaid is limited to applicable copayments required under the HMO or plan and to medicaid-covered services documented in writing as exclusions by the HMO or plan.

(1) If the HMO or plan uses a drug formulary, the medical director of the HMO or plan must sign and attach a written certification for each drug claim to document that a pharmaceutical product is not covered by the HMO or plan. The signature is a certification that the HMO or plan drug formulary does not contain a therapeutic equivalent that adequately treats the medical condition of the HMO or plan subscriber.

(2) Medical services not included in the HMO or plan are covered by medicaid only after review of the documentation and on approval by MAD-TPLU.

(3) An applicant/recipient covered by an HMO or plan is responsible for payment for medical services obtained outside the HMO or plan and for medical services obtained without complying with the rules or policies of the HMO or plan.

(4) An applicant/recipient living outside an HMO or plan coverage area may request a waiver of the requirement to use HMO or plan providers and services. An applicant/recipient for whom a coverage waiver is approved by the MAD-TPLU may receive reimbursement for expenses which allow him/her to travel to an HMO or plan participating provider, even if the provider is not located near the applicant/recipient's residence.

D. **Potential health care resources:** The [~~ISS~~] ISD caseworker must determine the presence of a source of health care if certain factors are identified during the application/reapplication interview.

(1) **Age of applicant/recipient:** Medicare must be explored if an applicant is over [~~sixty-five (65)~~] 65 years old. Students, especially college students, may have health or accident insurance through the school.

(2) **Death of applicant:** Applications on behalf of deceased individuals must be examined for "last illness" coverage through a life insurance policy.

(3) **Presence of income sources:** Certain specific income sources are indicators of possible third
party health coverage, which include:

(a) railroad retirement benefits and social security retirement/disability benefits indicating eligibility for Title XVIII (medicare) benefits;

(b) workers' compensation (WC) benefits paid to employees who suffer an injury or accident caused by conditions arising from employment; these benefits may compensate employees for medical expenses and lost income; payments for medical expenses may be made as medical bills are incurred or as a lump sum award;

(c) black lung benefits payable under the coal mine workers' compensation program, administered by the department of labor (DOL), can produce benefits similar to railroad retirement benefits if the treatment for illness is related to the diagnosis of pneumoconiosis; beneficiaries are reimbursed only if services are rendered by specific providers, authorized by the DOL; black lung payments are made monthly and medical expenses are paid as they are incurred; and

(d) Title IV-D payments or financial support payments from absent parents may indicate the potential for medical support; if a custodial parent does not have health insurance that meets a minimum standard, the court, in a divorce, separation or custody and support proceeding, may order the parent with the obligation of support, to purchase insurance for a child [45 CFR 303.31(b)(1); NMSA 40-4C-4(A)(1)[~~(Cum. Supp. 1992)~~]]; insurance can be obtained through the parent's employer or union [NMSA 40-4C-4(A)(2)[~~(Cum. Supp. 1992)~~]]; a parent who is unemployed may be ordered to pay all or a portion of the medical or dental expenses; for purposes of medical support, the minimum standards of acceptable coverage, deductibles, coinsurance, lifetime benefits, out-of-pocket expenses, co-payments, and plan requirements are the minimum standards of health insurance policies and managed care plans established for small businesses in New Mexico; see New Mexico insurance code.

(4) **Applicant/recipient has earned income:** Earned income usually indicates medical and health insurance made available by an employer.

(5) **Work history or military services:** Work history may indicate eligibility for other cash and medical benefits. Previous military service suggests the potential for veterans administration (VA) or department of defense (DOD) provided health care, including the civilian health and medical program of the United States (CHAMPUS). Within a [~~forty (40)~~] 40 mile radius of a military health care facility, DOD eligibles must obtain certification of non-availability of medical services from the base health benefits advisor in order to be eligible for CHAMPUS.

(6) **Applicant/recipient's expenses show insurance premium payments:** Monthly expense information may show that recipients pay private insurance premiums or are enrolled in an HMO or plan.

(7) **Applicant/recipient has a disability:** Disability information contained in applications or brought up during interviews may indicate casualties or accidents involving legally responsible third parties.

(8) **Applicant/recipient has a chronic disease:** Individuals with chronic renal disease are probably entitled to medicare. Applications for social security disability may be indicative of medicare coverage.

E. **Communicating third party liability information:** Information concerning health insurance or health plans is collected, entered into the computerized eligibility system and transmitted to the medical assistance division third party liability unit (MAD-TPLU) by the [~~ISS~~] ISD caseworker. Information about policy terminations are forwarded to MAD-TPLU

via memorandum. In all cases where TPL is verified to exist, a case file is created by the MAD-TPLU. TPL information, including names and addresses of insurance companies, is stated when possible at the time the provider verifies the client's eligibility for the date the services are provided.

(1) **Information exchange with county offices:** Information relating to accidents or incomplete information is transmitted to the MAD-TPLU directly.

(a) Information relating to potential or on-going malpractice suits is forwarded to MAD-TPLU via memorandum.

(b) If recipients receive a cash settlement, MAD-TPLU advises the appropriate county office or supplemental security income (SSI) office of the amount of cash received and the approximate date of receipt.

(2) **Information exchange with social security administration:** The MAD-TPLU receives TPL information from the social security office. This information is obtained on SSI applicants during initial eligibility application or eligibility redetermination. The social security office finds out if applicants have medical coverage through a third party and informs applicants of their obligation to cooperate with HSD in the pursuit of third party resources, and of their statutory assignment of medical support rights and payments for medical care to HSD.

(3) **Information exchange with the child support enforcement division:** The child support enforcement division (CSED) provides information to MAD-TPLU on cases identified by CSED as having health insurance [45 CFR 303.30(C)].

(a) MAD-TPLU refers cases to CSED when it learns that absent parents are not providing health coverage as required by court order or have health insurance available through employers but have not obtained it for their dependents as specified in the Child Support Enforcement Act of 1984, as amended.

(b) The New Mexico IV-D agency establishes paternity and obtains orders of support for medical payments. MAD-TPLU gives this agency information about lapses and changes of coverage as received by the MAD-TPLU. Notification takes place when the MAD-TPLU learns that claims for dependent children are rejected by absent parents' health insurance companies because the policies have been terminated, revised or no longer cover the children receiving IV-D agency services.

(4) **Information exchange with other departments or agencies:**

(a) The children, youth and families department (CYFD) provides information to MAD-TPLU to ensure the assignment of rights to medical support and payment is obtained on CYFD cases, such as subsidized adoptions and foster children cases.

(i) CYFD determines whether these individuals are covered by a health insurance policy or health plan and transmits this information to MAD-TPLU.

(ii) CYFD obtains the social security number of absent and custodial parents of medicaid eligible children or adolescents.

(b) MAD-TPLU performs data matches with CHAMPUS, worker's compensation, the highway department, wage data exchange (WPX) and private insurance companies to identify individuals who are covered by private health insurance or other liable third parties.

F. **Assignment of medical support:** As a condition of eligibility, HSD must require legally able applicants/recipients of benefits [42 CFR 433.146; NMSA 1978 27-2-28 (G)[~~(Repl. Pamp. 1991)~~]]:

(1) to assign his/her individual rights to medical support and payments; the assignment authorizes HSD to pursue and make recoveries from liable third parties on the recipient's behalf; and

(2) to assign the rights to medical support and payments of other individuals eligible for medicaid, for whom the applicant/recipient can legally make an assignment;

(3) the assignment of an individual's rights to medical support and payments to HSD occurs automatically under state law with the receipt of benefits; the actual signing of the application in and of itself does not constitute an assignment of the individual's rights to HSD.

G. **Refusal to assign medical support:** If a parent or legal guardian does not agree to assign his/her rights to receive third party medical support or payments, or refuses to cooperate with HSD in establishing paternity or providing information about responsible third parties, the child for whom that application is being made is still entitled to receive medicaid benefits, provided all other eligibility criteria are met.

H. **Cooperation with HSD:**

(1) As a condition of eligibility, recipient/applicant must cooperate with HSD in obtaining medical support and payments and in identifying and providing information about any health care coverage that he/she may have available to them [42 CFR 433.147; 45 CFR 232.42, 232.43; NMSA 1978 27-2-28(G)(3)[~~(Repl. Pamp. 1991)~~]]. Cooperation requirements include the following:

(a) help establish paternity for children born out of wedlock for whom individuals can legally assign rights;

(b) help obtain medical support and medical payments for themselves and other individuals for whom they can legally assign rights;

(c) help pursue liable third parties by identifying individuals and providing information to HSD;

(d) appear at a state or local office designated by HSD to give information or evidence relevant to the case, appear as a witness at a court or other proceeding or give information or attest to lack of information, under penalty of perjury; and

(e) refund HSD any money received for medical care that has already been paid; this includes payments received from insurance companies, personal injury settlements, and any other liable third party.

(2) **Waiver of cooperation:** The requirements for cooperation may be waived by HSD if it decides that applicants/recipients have good cause for refusing to cooperate. Waivers can be obtained for the following:

(a) establishing paternity for children born out of wedlock; or

(b) obtaining medical support and payments for an applicant/recipient or other individual for whom he/she can legally assign rights;

(c) to waive the requirement and make a finding of "good cause", HSD must be presented with corroborating evidence that cooperation is against the best interest of the individual, child(ren), or others;

(d) specific factors considered in making this determination include physical or emotional harm to child(ren), parent or caregiver relative, adoption proceedings, and potential for emotional impairment.

(3) **Penalties for failure to assign or cooperate:** An applicant/recipient who refuses to assign his/her individual right to benefits or to assign the rights of any other individual for whom he/she can legally make assignment, or who refuses to cooperate with HSD, is not eligible for medicaid or may have his/her eligibility terminated. In denying or terminating eligibility, HSD complies with federal notice and hearing requirements. See 42 CFR 431.200.

(4) **Sanctions for failure to refund payments:** An applicant/recipient will be immediately ineligible for benefits if HSD determines that he/she received funds in the form of insurance payments or settlement amounts from personal injury case awards and failed to refund the amounts paid for those services to HSD. Recipients whose eligibility has been revoked due to failure to refund a medicaid payment for medical care are deemed ineligible for future services for a period of not less than one [~~(1)~~] year and until full restitution has been made to HSD.

I. **Trauma diagnosis claims processing:** To help identify liable third parties who may have caused a injury

to a medicaid recipient, MAD-TPLU has implemented an editing process in its claims processing system which permits the recognition of all claims with a trauma diagnosis [42 CFR 433.138(4)]. Trauma inquiry letters are mailed to recipients identified in the edit. The letters ask recipients to provide more information about possible accidents, causes of accidents, and whether legal counsel has been obtained. Failure to respond to these inquiries is considered a failure to cooperate and results in termination of medicaid benefits.

[J. **Medicaid estate recovery:** The New Mexico human services department (department) is mandated to seek recovery from the estates of certain individuals up to the amount of medical assistance payment made by the department on behalf of the individual. See Social Security Act Section 1917, as amended by the Omnibus Budget Reconciliation Act of 1993, Section 13612; NMSA 1978 Section 27-2A-1 et. seq. (Cum. Supp. 1994) the "Estate Recovery Act". This section provides a definition of estate and medical assistance, estates subject to recovery under this provision, recovery process, and waiver provisions.

(1) **Definitions used in medicaid estate recovery:** The following terms are used throughout this Section:

(a) "estate" means real and personal property and other assets of an individual subject to probate or administration pursuant the uniform probate code; and

(b) "medical assistance" means amounts paid by the department as medical assistance pursuant to Title XIX (Medicaid) of the Social Security Act, or any successor act.

(2) **Estates subject to recovery:** The estates of medicaid recipients who meet the following criteria are subject to the provisions of the Medicaid Estate Recovery Act.

(a) Recipients who were fifty-five (55) years of age or older when medical assistance payments were made on their behalf for nursing facilities services, home and community based services, and/or related hospital and prescription drug services.

(i) For purposes of this section, "related hospital and prescription drug services" are defined as such hospital and prescription drug services received by the medicaid recipient fifty-five (55) years of age or older while he/she was receiving nursing facility or home and community-based services.

(ii) "Related hospital and prescription drug services" for qualified medicare beneficiaries include the medicare cost sharing amount paid to the extent that such amounts are for nursing facility services, home and community-based services, and related hospital and prescription drug services described above.

(b) Recovery from a recipient's estate will be made only after the death of the recipient's surviving spouse, if any, and only at a time that the recipient does not have surviving child(ren) who are less than twenty-one years of age or blind or disabled, as defined at 42 U.S.C. 1383c.

(c) Recovery under the provisions of the estate recovery regulations is limited to payments for applicable services received on or after October 1, 1993 except that recovery also is permitted for pre-October 1993 payments for nursing facility services received by medicaid recipients who were sixty-five (65) years of age or older when such nursing facility services were received.

(3) **Administrative process:**

(a) During the application or redetermination process for medicaid eligibility, the local county income support division (ISD) office will identify the assets of an applicant/recipient which may be considered as part of the applicant/recipient's estate. Information explaining estate recovery will be furnished to the applicant/recipient during the application or redetermination process.

(b) At the death of the medicaid recipient, the medical assistance division (MAD) or its designee will determine if recoverable assets exist and file a claim against the estate in the manner prescribed for creditors by the New Mexico probate code.

(c) MAD or its designee will send notice to the applicable probate court with jurisdiction over the matter and to the recipient's personal representative or successor in interest if it chooses to seek recovery. Such notice will contain the following information:

(i) statement describing the action MAD or its designee intends to take;

(ii) reasons for the intended action;

(iii) statutory authority for the action;

(iv) amount to be recovered;

(v) opportunity to apply for the undue hardship waiver, procedures for applying for a hardship waiver and the relevant timeframes involved;

(vi) explanation of the representative's right to request an administrative hearing and his/her right to be represented at the hearing by legal counsel, family member, friend, or other spokesperson; and

(vii) the method by which an affected person may obtain a hearing and the applicable timeframes involved.

(d) Once notified by MAD or its designee of the decision to seek recovery, it will be the responsibility of the recipient's personal representative or successor in interest to notify other individuals who would be affected by the proposed recovery.

(e) In situations where there is no personal representative or successor in interest, MAD or its designee will notify known family members or heir(s) of the proposed recovery.

(f) **Date of death reporting:** Income support specialists are required to enter appropriate termination codes in the event of the death of an eligible recipient. These codes are identified as follows:

(i) 244 - the member(s) listed below have died (system generated when date of death field is completed).

(ii) 544 - the member(s) listed below have died (worker generated when date of death is not known).

(iii) 557 - the head of the assistance group has died.

(iv) 572 - death of all members

(v) 50 (198 C system)

(vi) social security administration will report death information for individuals under the supplemental security income program via the SDX system (Code T01).

(4) **Waiver of recovery by the department:** The department may compromise, settle, or waive recovery pursuant to the Medicaid Estate Recovery Act if it deems that such action is in the best interest of the state and/or federal government.

(a) The department may waive recovery because recovery would work an undue hardship if the:

(i) deceased recipient's heir(s) would become eligible for assistance programs (such as AFDC or general assistance) and/or medical assistance programs (such as medicaid) or be put at risk of serious deprivation without the receipt of the proceeds of the estate;

(ii) deceased recipient's heir(s) would be able to discontinue reliance on cash assistance programs and/or medical assistance programs if he/she received the inheritance from the estate;

(iii) assets subject to recovery are the sole income source for the heir(s) or are homesteads of modest value as defined herein; or

(iv) other compelling circumstances.

(b) Within ninety (90) days of the receipt of notice of the action MAD or its designee intends to take, the recipient's representative or successor in interest must apply for an undue hardship waiver of recovery.

(c) For purposes of this provision, "deprivation" is defined as the inability

~~to pay for the basic provision of food, clothing, or shelter. Deprivation does not exist simply because the application of the Medicaid Estate Recovery Act may cause an inconvenience or restriction to the heir(s) current lifestyle.~~

~~(d) For purposes of this provision, a homestead of "modest value" is defined as fifty percent (50%) or less of the average price of homes in the county where the homestead is located, as of the date of the recipient's death.~~

~~(e) For purposes of this provision, undue hardship does not exist if the individual created the hardship by resorting to estate planning methods by which the individual divested assets to avoid estate recovery. If the deceased recipient undertook estate planning within one year of the date of death, such as changing the form of title or encumbering the property, the department presumes that the resulting financial condition does not qualify for an undue hardship waiver. The provisions included in this paragraph may be waived if the recipient's representative~~
~~or heir(s) can prove to the department's satisfaction that estate planning was undertaken for a purpose other than to avoid estate recovery.~~]

[2-1-95, 11-15-95; 8.200.420.12 NMAC - Rn, 8 NMAC 4.MAD.425 & A, 7-1-01; A, 7-1-03; A, 11-1-10]

8.200.420.13 MEDICAID ESTATE RECOVERY: HSD is mandated to seek recovery from the estates of certain individuals up to the amount of medical assistance payments made by the HSD on behalf of the individual. See Social Security Act Section 1917 [42 USC 1396p(b); NMSA 1978, Section 27-2A-1 et seq. "Medicaid Estate Recovery Act"].

A. **Definitions used in medicaid estate recovery:**

(1) **Estate:** Real and personal property and other assets of an individual subject to probate or administration pursuant to the New Mexico uniform probate code.

(2) **Medical assistance:** Amounts paid by the department for long term care services including related hospital and prescription drug services.

(3) **Personal representative:** An adult designated in writing who is authorized to represent the estate of the medicaid recipient.

B. **Basis for defining the group:** Medicaid recipients who were 55 years of age or older when medical assistance payments were made on their behalf for nursing facilities services, home and community based services, and related hospital and prescription drug services are subject to estate recovery.

C. **The following exemptions apply to estate recovery:**

(1) qualified medicare beneficiaries, specified low-income beneficiaries, qualifying individuals, and qualified disabled and working individuals are exempt from estate recovery for the receipt of hospital and prescription drug services unless they are concurrently on a nursing facility category of eligibility or on a home and community based services waiver; this provision applies to medicare cost-sharing benefits (i.e., part A and part B premiums, deductibles, coinsurance, and co-payments) paid under the medicare savings programs;

(2) certain income, resources, and property are exempted from medicaid estate recovery for American Indians and Alaska Natives;

(a) interest in and income derived from tribal land and other resources held in trust status and judgment funds from the Indian claims commission and the U.S. claims court;

(b) ownership interest in trust or non-trust property, including real property and improvements;

(i) located on a reservation or near a reservation as designated and approved by the bureau of Indian affairs of the U.S, department of interior; or

(ii) for any federally-recognized tribe located within the most recent boundaries of a prior federal reservation;

(iii) protection of non-trust property described in Subparagraphs (a) and (b) is limited to circumstances when it passes from an Indian to one or more relatives, including Indians not enrolled as members of a tribe and non-Indians such as a spouse and step-children, that their culture would nevertheless protect as family members; to a tribe or tribal organization; or to one or more Indians;

(c) income left as a remainder in an estate derived from property protected in Paragraph (2) above , that was either collected by an Indian, or by a tribe or tribal organization and distributed to Indians that the individual can clearly trace it as coming from the protected property;

(d) ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources resulting from the exercise of federally-protected rights, and income either collected by an Indian, or by a tribe or tribal organization and distributed to Indians derived from these sources as long as the individual can clearly trace it as coming from protected sources; and

(e) ownership interest in or usage of rights to items not covered by Subparagraphs (a) through (d) above that have unique religious, spiritual, traditional, and or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

D. **Recovery process:** Recovery from a recipient's estate will be made only after the death of the recipient's surviving spouse, if any, and only at a time that the recipient does not have surviving child(ren) who are less than 21 years of age or blind or who meet the social security administration's definition of disability.

(1) Estate recovery is limited to payments for applicable services received on or after October 1, 1993 except that recovery also is permitted for pre-October 1993 payments for nursing facility services received by medicaid recipients who were 65 years of age or older when such nursing facility services were received.

(2) A recovery notice will be mailed to the personal representative or next of kin upon the recipient's death with the amount of claim against the estate, information on hardship waivers and hearing rights.

(3) Responsibility to report date of death: It is the family or personal representative's responsibility to report the recipient's date of death to the ISD office within 10 days from the date of death.

E. **Recipient rights and responsibilities:**

(1) At the time of application or re-certification, a personal representative must be identified or confirmed by the applicant/recipient or their designee.

(2) Information explaining estate recovery will be furnished to the applicant/recipient, personal representative, or designee during the application or recertification process. Upon the death of the medicaid recipient, a notice of intent to collect (recovery) letter will be mailed to the recipient's personal representative with the total amount of claims paid by medicaid on behalf of the recipient. The personal representative must acknowledge receipt of this letter in the manner prescribed in the letter within 30 days of receipt.

(3) During the application or recertification process for medicaid eligibility, the local
county ISD office will identify the assets of an applicant/recipient. This includes all real and personal property which belongs to in whole or in part to the applicant/recipient and the current fair market value of each asset. Any known encumbrances on the asset(s) should be identified at this time by the applicant/recipient or personal representative.

(4) MAD or its designee will send notice of recovery to the probate court, when applicable, and to the recipient's personal representative or successor in interest. The notice will contain the following information:

(a) statement describing the action MAD or its designee intends to take;

(b) reasons for the intended action;

(c) statutory authority for the action;

(d) amount to be recovered;

(e) opportunity to apply for the undue hardship waiver, procedures for applying for a hardship waiver and the relevant timeframes involved;

(f) explanation of the representative's right to request an administrative hearing; and

(g) the method by which an affected person may obtain a hearing and the applicable timeframes involved.

(5) Once notified by MAD or its designee of the decision to seek recovery, it is the responsibility of the recipient's personal representative or successor in interest to notify other individuals who would be affected by the proposed recovery.

(6) The personal representative will:

(a) remit the amount of medical assistance payments to HSD or designee;

(b) apply for an undue hardship waiver; see Paragraph (2) of Subsection F below; and

(c) request an administrative hearing.

F. **Waivers:**

(1) **General:** HSD may compromise, settle, or waive recovery pursuant to the Medicaid Estate Recovery Act if it deems that such action is in the best interest of the state or federal government.

(2) **Hardship provision:** HSD or its designee may waive recovery because recovery would work an undue hardship on the heirs. The following are deemed to be causes for hardship:

(a) deceased recipient's heir(s) would become eligible for a needs-based assistance program (such as medicaid or temporary assistance to needy families (TANF) or be put at risk of serious deprivation without the receipt of the proceeds of the estate;

(b) deceased recipient's heir(s) would be able to discontinue reliance on a needs-based program (such as medicaid or TANF) if he/she received the inheritance from the estate;

(c) assets subject to recovery are the sole income source for the heir(s);

(d) the homestead is worth 50 percent or less than the average price of a home in the county where the home is located based on census data compared to the property tax value of the home; and

(e) other compelling circumstances as determined by HSD or its designee.

[8.200.420.13 NMAC - Rn & A, 8.200.420.12 NMAC, 11-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.302.4 NMAC, Sections 3, 6, 8 -12 and 17, effective November 1, 2010.

8.302.4.3 STATUTORY AUTHORITY: The New Mexico medicaid program [~~is~~] and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under [~~Title XIX of~~] the Social Security Act as amended[~~, or other state statute~~] or by state statute. See NMSA 1978, Sections 27-2-12 et seq.

[2/1/95; 8.302.4.3 NMAC - Rn, 8 NMAC 4.MAD.000.3 & A, 8/14/08; A, 11/1/10]

8.302.4.6 OBJECTIVE: The objective of [~~these rules~~] this rule is to provide instruction for the service portion of the New Mexico medical assistance programs.

[2/1/95; 8.302.4.6 NMAC - Rn, 8 NMAC 4.MAD.000.6 & A, 8/14/08; A, 11/1/10]

8.302.4.8 MISSION STATEMENT: [~~The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of eligible recipients by furnishing payment for quality health services at levels comparable to private health plans.~~] To reduce the impact of poverty on people living in New Mexico and to assure low income and individuals with disabilities in New Mexico equal participation in the life of their communities.

[2/1/95; 8.302.4.8 NMAC - Rn, 8 NMAC 4.MAD.002 & A, 8/14/08; A, 11/1/10]

8.302.4.9 OUT-OF-STATE AND BORDER AREA PROVIDERS: Border area services are those that are rendered within 100 miles of the New Mexico state border (Mexico excluded). Out-of-state services are those that are rendered in an area more than 100 miles from the New Mexico border (Mexico excluded). To help New Mexico eligible recipients receive medically necessary services, [~~MAD~~] the medical assistance division (MAD) pays for border area services to the same extent and subject to the same rules and requirements that such services are covered when provided within the state. MAD pays for out-of-state services as described under 8.302.4.12 NMAC, *covered out-of-state services.*

[2/1/95; 8.302.4.9 NMAC - Rn, 8 NMAC 4.MAD.704 & A, 8/14/08; A, 11/1/10]

8.302.4.10 ELIGIBLE PROVIDERS: [~~Out-of-state providers and border providers must be licensed or certified by their respective states to be considered eligible to provide services to New Mexico recipients, or if providing a New Mexico home and community-based services waiver service to a New Mexico medicaid waiver recipient, a provider that meets the New Mexico home and community-based services waiver standards and requirements in all respects. To be reimbursed for furnishing services to New Mexico medicaid recipients, out-of-state or border providers must complete the New Mexico medical assistance program provider participation application and have the application approved by the New Mexico medical assistance division (MAD).~~

~~A. Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, a licensed practitioner or facility that meets applicable requirements is eligible to be reimbursed for furnishing covered services to an eligible program recipient. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instruction, utilization review instructions, and other pertinent materials. The following providers are eligible to apply for a provider participation agreement, bill and receive reimbursement for furnishing medical services:~~

~~(1) border area and out-of-state providers licensed by or certified by their respective states to practice medicine or osteopathy [42 CFR Section 440.50 (a)(1)(2)]; and other providers licensed or certified by their state to perform services equivalent to those covered by the medical assistance programs in New Mexico; practices or groups formed by these individuals may also receive reimbursement for services;~~

~~(2) border providers within 100 miles of the New Mexico state border (Mexico excluded), are subject to the rules governing the provision of services for an in-state provider; and~~

~~(3) out-of-state providers more than 100 miles from the New Mexico state border (Mexico excluded).~~

~~B. Once enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program rules manuals, billing and utilization review instructions, and other pertinent materials and to obtain answers to questions on or not covered by these materials. To be eligible~~

~~for reimbursement a provider is bound by the provisions of the MAD provider participation agreement.~~]

Health care to eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only. The providers listed in Subsections A-C of 8.302.4.10 NMAC, *eligible providers*, are eligible for a provider participation agreement, bill and receive reimbursement for furnishing medical services:

A. Eligible providers include border area and out-of-state providers licensed by or certified by their respective states to practice medicine or osteopathy [42 CFR Section 440.50 (a)(1)(2)]; and other providers licensed or certified by their state to perform services equivalent to those covered by the medical assistance programs in New Mexico; practices or groups formed by these individuals may also receive reimbursement for services.

B. Eligible providers include border area providers within 100 miles of the New Mexico state border (Mexico excluded), subject to the rules governing the provision of services for an in-state provider.

C. Eligible providers include out-of-state providers more than 100 miles from the New Mexico state border (Mexico excluded), subject to the rules governing the provision of services for an in-state provider and any additional rules that may be specified for the specific services and providers within this manual.

[2/1/95; 8.302.4.10 NMAC - Rn, 8 NMAC 4.MAD.704.1 & A, 8/14/08; A, 11/1/10]

8.302.4.11 PROVIDER RESPONSIBILITIES: [~~A provider who furnishes services to medicaid and other health care program eligible recipients must comply with all federal and state laws and regulations relevant to the provision of services as specified in the MAD provider participation agreement. A provider must also conform to MAD program rules and instruction, as updated. A provider is also responsible for following coding manual guidelines and MS correct coding initiatives, including not improperly unbundling or upcoding services. A provider must verify that individuals are eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient.~~]

A. A provider who furnishes services to a medicaid or other health care program eligible recipient must comply with all federal and state laws, regulations and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and the centers for medicaid and medicare (CMS) correct coding initiatives, including not improperly unbundling or upcoding services. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for billing and for authorization of services.

B. A provider must verify that an individual is eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient.

C. When services are billed to and paid by a MAD fee-for-service coordinated services contractor authorized by HSD, under an administrative services contract, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

[2/1/95; 8.302.4.11 NMAC - Rn, 8 NMAC 4.MAD.704.2 & A, 8/14/08; A, 11/1/10]

8.302.4.12 COVERED OUT-OF-STATE SERVICES: [~~MAD covers services and procedures furnished by out-of-state providers when medically necessary for the diagnosis and treatment of an illness or injury as indicated by the eligible recipient's condition only~~] MAD covers services and procedure furnished by a provider located within 100 geographical miles of the New Mexico border, even though the road miles may be greater than 100 miles, to the same extent and using the same coverage rules as for an in-state provider. See 8.302.4.9 NMAC, *out of state and border area providers*. When it is the general practice for an eligible recipient in a New Mexico locality to access medical services in a location more than 100 geographical miles from the New Mexico border, MAD will treat that out-of-state location as a border area. MAD covers services and procedures furnished by a provider more than 100 geographical miles from the New Mexico border, excluding Mexico, to the extent and using the same coverage rules as for in-state provider when one or more of the following conditions are met.

A. An eligible recipient is out-of-state at the time the services are needed and the delivery of services is of an emergent or urgent nature or if the eligible recipient's health would be endangered by traveling back to New Mexico. Services must be medically necessary to stabilize the eligible recipient's health and prevent significant adverse health effects, including preventable hospitalization. Claims for such services are subject to pre-payment or post-payment reviews to assure the emergent or urgent need [~~for~~] or medical necessity of the services.

B. On-going-services provided by a medical assistance program within the state continue to be necessary when the eligible recipient is visiting another state.

C. [~~Care is medically necessary for eligible recipient foster children placed by the state of New Mexico in out-of-state homes or institutions.~~] Care is medically necessary for an eligible recipient that is placed by the state of New Mexico in foster care in an out-of-home placement or in an institution. Care is medically necessary for an eligible recipient that was adopted from New Mexico and resides out-of-state. If the agreement with the other state requires that state's medicaid program pay for covered services, MAD will only consider payment when a service is not

covered by the other state and the eligible recipient would be eligible for that service if living in New Mexico.

D. Durable medical equipment, medical supplies, prosthetics or orthotics are purchased from out-of-state vendors.

E. Clinical laboratory tests, radiological interpretations, professional consultations or other services are performed by out-of-state laboratories but do not require the eligible recipient to leave the state.

F. Medical services or procedures considered medically necessary are not available in the state of New Mexico. All services that are not available in New Mexico require prior authorization when provided by an out-of-state provider. An out-of-state service may be limited to the closest provider or an otherwise economically prudent choice of provider capable of rendering the service.

G. Services, such as personal assistance, are needed by an eligible recipient out-of-state if that recipient is eligible to receive services through a medicaid home and community-based services waiver program and is traveling to another state.

[2/1/95; 8.302.4.12 NMAC - Rn, 8 NMAC 4.MAD.704.3 & A, 8/14/08; A, 11/1/10]

8.302.4.17 REIMBURSEMENT: Reimbursement to an out-of-state or border area provider is made at the same rate as for an in-state provider except as otherwise stated in the relevant specific providers and services sections of the MAD program rules manual.

[~~A. The billed charge must be provider's usual and customary charge for the service or procedure.~~

~~B. "Usual and customary" charge refers to the amount that the provider charges the general public in the majority of cases for a specific procedure or service.~~]

A. Unless payment for a service is made using a diagnosis related group or outpatient prospective payment system rate, reimbursement to a provider for covered services is made at the lesser of the following:

(1) the billed change which must be the provider's usual and customary charge for service; "usual and customary charge" refers to the amount which the individual provider charges the general public in the majority of cases for a specific procedure or service; or

(2) the MAD fee schedule for the specific service or procedure.

B. When a provider and an MCO are unable to agree to terms or fail to execute an agreement for any reason, the MCO shall be obligated to pay, and the provider shall accept, 100 percent of the "applicable reimbursement rate" based on the provider type for services rendered under both emergency and non-emergency situations. The "applicable reimbursement rate" is defined as the rate paid by HSD to a provider participating in medicaid or other medical assistance programs administered by HSD and excludes disproportionate share hospital and medical education payments.

[2/1/95; 8.302.4.17 NMAC - Rn, 8 NMAC 4.MAD.704.6 & A, 8/14/08; A, 11/1/10]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.310.5 NMAC, Sections 1, 3, 5, 6, 8 - 15, effective November 1, 2010.

8.310.5.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[2/1/95; 8.310.5.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 6/1/03; A, 11/1/10]

8.310.5.3 STATUTORY AUTHORITY: [~~The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA, 1978 (Repl. Pamp. 1991.~~] The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-2-12 et seq.

[2/1/95; 8.310.5.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 6/1/03; A, 11/1/10]

8.310.5.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.310.5.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 6/1/03; A, 11/1/10]

8.310.5.6 OBJECTIVE: [~~The objective of these regulations is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review and provider reimbursement.~~] The objective of this rule is to provide instruction for the service portion of the New Mexico medicaid program.

[2/1/95; 8.310.5.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 6/1/03; A, 11/1/10]

8.310.5.8 MISSION STATEMENT: [~~The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid eligible individuals to by furnishing payment for quality health services at levels comparable to private health plans.~~] To reduce the impact of poverty on people living in New Mexico and to assure low income and individuals with disabilities in New Mexico equal participation in the lives of their communities.

[2/1/95; 8.310.5.8 NMAC - Rn, 8 NMAC 4.MAD.002, 6/1/03; A, 11/1/10]

8.310.5.9 ANESTHESIA SERVICES: [~~The New Mexico medicaid program (medicaid)~~] The medical assistance division (MAD) pays for medically necessary health services furnished to eligible recipients. To help New Mexico [~~medicaid~~] eligible recipients receive medically necessary services, [~~the New Mexico medical assistance division (MAD)~~] MAD pays for covered anesthesia services. [~~This part describes eligible providers, covered services, service limitations, and general reimbursement methodology.~~]

[2/1/95; 8.310.5.9 NMAC - Rn, 8 NMAC 4.MAD.714 & A, 6/1/03; A, 11/1/10]

8.310.5.10 ELIGIBLE PROVIDERS: [~~Upon approval of medical assistance division program provider participation agreements by MAD, the following providers are eligible to be reimbursed for providing anesthesia services:~~]

A. Health care to eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of

the MAD provider participation agreement and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only. Providers must supply necessary information in order for payment to be made. Eligible providers include:

[~~A.~~] (1) individuals licensed to practice medicine or osteopathy who are certified or eligible to be certified by the American board of anesthesiology; payments are made to an individual [~~providers~~] provider or the group practices to which they belong; for physicians not certified or eligible to be certified by the American board of anesthesiology, anesthesia services are limited to their scope of practice as determined by the medical board;

[~~B.~~] (2) nurse anesthetists certified by the American association of nurse anesthetists council of certification and licensed as registered nurses[~~,~~] within the scope of their practice and specialty as defined by state law; and

[~~C.~~] (3) [~~Anesthesiologist~~] anesthesiology assistants certified by the national commission on the certification of [~~anesthesiologists~~] anesthesiology assistants (NCCAA) and licensed as [~~anesthesiologist~~] anesthesiology assistants within the scope of their practice and specialty as defined by state law;

[~~D. Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.~~]

B. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

[2/1/95; 8.310.5.10 NMAC - Rn, 8 NMAC 4.MAD.714.1 & A, 6/1/03; A, 11/1/10]

8.310.5.11 PROVIDER RESPONSIBILITIES: [~~Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, General Provider Policies. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance. Providers must maintain records which are sufficient to fully disclose the extent and nature of the services provided to recipients. See 8.302.1 NMAC, General Provider Policies.~~] Documentation of complications, emergency conditions, and physical status of recipients is required for payment based on additional units and reimbursement. For purposes of this section, an "emergency" is defined as a situation existing when delay in treating the recipient would lead to a significant threat to life or body part.

A. A provider who furnishes services to medicaid and other health care programs eligible recipients must comply with all federal and state laws, regulations, and executive orders relevant to the provision of medical services as specified in the MAD provider participation agreement. A provider must adhere to the MAD program rules and instruction as specified in this manual and its appendices, and program directions and billing instruction as specified in this manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or up-coding services. See 8.302.1 NMAC, *General Provider Policies*.

B. A provider must verify that individuals are eligible for a specific health care program administered by HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient. See 8.302.1 NMAC, *General Provider Policies.*

[2/1/95; 8.310.5.11 NMAC - Rn, 8 NMAC 4.MAD.714.2, 6/1/03; A, 11/1/10]

8.310.5.12 COVERED SERVICES: [~~Medicaid~~] MAD covers anesthesia and monitoring services which are medically necessary for performance of surgical or diagnostic procedures, as required by the condition of the eligible recipient. All services must be provided within the limits of [~~medicaid~~] MAD benefits, within the scope and practice of anesthesia as defined by state law and in accordance with applicable federal and state and local laws and regulations.

[2/1/95; 8.310.5.12 NMAC - Rn, 8 NMAC 4.MAD.714.3, 6/1/03; A, 11/1/10]

8.310.5.13 PRIOR [~~APPROVAL~~] AUTHORIZATION AND UTILIZATION REVIEW: All [~~medicaid~~] MAD services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. [~~See Section MAD-705 [8.302.5 NMAC] Prior Approval and Utilization Review. Once enrolled, providers receive instructions and documentation forms necessary for prior approval and claims processing.~~] See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. The provider must contact HSD or its authorized agents to request utilization review instruction. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for authorization of services.

A. **Prior [~~approval~~] authorization:** Certain procedures or services can require prior [~~approval~~] authorization from MAD or its designee. Services for which prior [~~approval~~] authorization was obtained remain subject to utilization review at any point in the payment process, including after payment has been made. See Subsection A of 8.311.2.16 NMAC, *emergency room services*.

B. **Eligibility determination:** [~~Prior approval of services does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.~~] Prior authorization of services does not guarantee that an individual is eligible for medicaid or other health care programs. A provider must verify that an individual is eligible for a specific program at the time services are furnished and must determine if an eligible recipient has other health insurance.

C. **Reconsideration:** [~~Providers who disagree with prior approval~~] A provider who disagrees with prior authorization request denials and other review decisions can request a re-review and a reconsideration. See Section MAD-953 [8.350.2 NMAC], *Reconsideration of Utilization Review Decisions.*

[2/1/95; 8.310.5.13 NMAC - Rn, 8 NMAC 4.MAD.714.4, 6/1/03; A, 11/1/10]

8.310.5.14 NONCOVERED SERVICES: Anesthesia services are subject to the limitations and coverage restrictions which exist for other [~~medicaid~~] MAD services. See [~~Section MAD-602 [8.301.3 NMAC]~~] 8.301.3 NMAC, *General Noncovered Services.*

A. When a provider performing the medical or surgical procedure also provides a level of anesthesia lower in intensity than moderate or conscious sedation, such as a local or topical anesthesia, payment for this service is considered to be part of the underlying medical or surgical

service and will not be covered in addition to the procedure.

B. An anesthesia service is not payable if the medical or surgical procedure is not a medicaid or other health care benefit.

C. Separate payment is not allowed for qualifying circumstances; payment is considered bundled into the anesthesia allowance.

D. Separate payment is not allowed for modifiers (modifiers that begin with the letter "P") that are used to indicate that the anesthesia was complicated by the physical status of the patient.

[2/1/95; 8.310.5.14 NMAC - Rn, 8 NMAC 4.MAD.714.5, 6/1/03; A, 11/1/10]

8.310.5.15 REIMBURSEMENT:

A. [~~Anesthesia providers~~] An anesthesia provider must submit claims for reimbursement on the [~~HCFA-1500~~] CMS 1500 claim form or its successor. [~~See Section MAD-702 [8.302.2 NMAC~~]] See 8.302.2 NMAC, *Billing for Medicaid Services*. [~~Once enrolled, providers receive instructions on documentation, billing and claims processing.~~] Reimbursement for anesthesia services is made at the lesser of the following:

(1) the provider's billed charge; or

(2) the maximum allowed by MAD for the specific service or procedure.

[~~(a)~~]B. The provider's billed charge must be their usual and customary charge for services.

[~~(b)~~]C. "Usual and customary charge" refers to the amount which the provider charges the general public in the majority of cases for a specific procedure or service.

[~~B.~~] D. **Reimbursement units:** Reimbursement for anesthesia services is calculated using the MAD fee schedule anesthesia "base units" plus units for time and units for risk.

(1) Each [~~surgical~~] anesthesia procedure is assigned a specific number of relative value units which becomes the "base unit" for the procedure. Units of time are also allowed for the procedure. Reimbursement is calculated by multiplying the total number of units by the [~~dollar amount~~] conversion factor allowed for each unit.

(2) The [~~dollar amounts allowed~~] reimbursement per anesthesia unit [~~vary~~] varies depending on who furnishes the service. Separate rates are established for a physician anesthesiologist, a medically-directed certified registered nurse [~~anesthesiologist~~] anesthetist (CRNA), [~~anesthesiologist~~] anesthesiology assistant (AA) and a non-directed CRNA.

(3) Time units vary, depending on the service. For anesthesia provided directly by a physician anesthesiologist, CRNA, or an [~~anesthesiologist~~] anesthesiology assistant, one [~~(1)~~] time unit is allowed for each [~~fifteen (15)~~] 15- minute period [~~a~~] an eligible recipient is under anesthesia. For medical direction, one [~~(1)~~] time unit is allowed for each [~~thirty (30)~~] 15- minute period.

(4) Risk factor modifiers are used to describe the relative risk associated with general anesthesia to a particular recipient. Performing anesthesia providers are reimbursed for additional units only if risk factor modifiers are indicated on the claim.

[~~C.~~] E. **Medical direction:** Medical direction by a physician anesthesiologist, not the surgeon or assistant surgeon, to a certified registered nurse anesthetist (CRNA) or an [~~anesthesiologist~~] anesthesiology assistant (AA) is [~~payable using the following methodologies:~~] paid on the basis of 50 percent of the allowance for the service performed by the physician alone. Medical direction occurs if the physician medically directs qualified practitioners in two, three, or four concurrent cases and the physician performs the activities described below. Concurrency is defined with regard to the maximum number of procedures that the physician is medically directing within the context of a single procedure and whether these other procedures overlap each other. Concurrency is not dependent on each of the cases involving an eligible recipient. For example, if an anesthesiologist directs three concurrent procedures, two of which involve non-eligible recipients and the remaining a MAD eligible recipient, this represents three concurrent cases.

[~~(1) For medical direction of two (2) nurse anesthetists or AA's performing two (2) concurrent procedures, the base units are reduced by ten percent (10%);~~

~~(2) For medical direction of three (3) nurse anesthetists performing three (3) concurrent procedures, the base units are reduced by twenty-five percent (25%); and~~

~~(3) For medical direction of four (4) nurse anesthetists performing four (4) concurrent procedures, the base units are reduced by forty percent (40%).~~]

[~~(a)~~] (1) Time units for medical direction are allowed at one [~~(1)~~] time unit for each [~~thirty (30)~~] 15- minute interval.

[~~(b) All the following requirements must be met before anesthesiologists are reimbursed for medical direction:~~

~~(i) the anesthesiologist does not perform any other service during the same period of time;~~

~~(ii) the anesthesiologist cannot furnish anesthesia and provide medical direction concurrently;~~

~~(iii) the anesthesiologist provides pre-anesthesia examinations or evaluations;~~

~~(iv) the anesthesiologist participates in the anesthesia plan, including induction and emergence;~~

~~(v) the anesthesiologist monitors the course of anesthesia administration at frequent intervals;~~

~~(vi) the anesthesiologist remains physically present and available in the operating suite for immediate diagnosis and treatment of emergencies; and~~

~~(vii) the anesthesiologist provides any indicated post-anesthesia care.~~

~~(c)~~] (2) Anesthesia claims are not payable if the surgery is not a medicaid benefit or if any required documentation was not obtained.

(3) Medical direction is a covered service only if the physician:

(a) performs a pre-anesthesia examination and evaluation; and

(b) prescribes the anesthesia plan; and

(c) personally participates in the most demanding procedures of the anesthesia plan including induction and emergence; and

(d) ensures that any procedures in the anesthesia plan that he/she does not perform are performed by a qualified anesthetist; and

(e) monitors the course of anesthesia administration at frequent intervals; and

(f) remains physically present and available for immediate diagnosis and treatment of emergencies; and

(g) provides indicated post-anesthesia care.

(4) For medical direction, the physician must document in the medical record that he performed the pre-anesthetic exam and evaluation, provided indicated post-anesthesia care, was present during some portion of the anesthesia monitoring, and was present during the most demanding procedures, including induction and emergence, where indicated.

(5) A physician who is concurrently directing the administration of anesthesia to not more than four surgical patients may not ordinarily be involved in furnishing additional services to other patients. Addressing an emergency of short duration in the immediate area, administering an epidural or caudal anesthetic to ease labor pain, or periodic, rather than continuous, monitoring of an obstetrical patient does not substantially diminish the scope of control exercised by the physician in directing the administration of anesthesia to surgical patients. Medical direction criteria are met even though the physician responds to an emergency of short duration.

(6) While directing concurrent anesthesia procedures, a physician may receive patients entering the operating suite for the next surgery, check or discharge patients in the recovery room, or handle scheduling matters without affecting fee schedule payment.

(7) If a physician leaves the

immediate area of the operating suite for other than short durations or devotes extensive time to an emergency case or is otherwise not available to respond to the immediate needs of the surgical patient, the physician's services to the surgical patients are supervisory in nature. Medical direction cannot be billed.

[~~D.~~] F. **Monitored anesthesia care:** Medically necessary monitored anesthesia care (MAC) services are reimbursed at base units plus time units.

(1) "Monitored anesthesia care" [~~as defined by the American society of anesthesiologists~~] is anesthesia care that involves the intraoperative monitoring by a physician or qualified practitioner under the medical direction of a physician, or of the eligible recipient's vital physiological signs in anticipation of the need for administration of general anesthesia, or of the development of adverse physiological eligible recipient reaction to the surgical procedure and includes:

(a) performance of a pre-anesthetic examination and evaluation;

(b) prescription of the [~~anesthetic~~] anesthesia care required;

(c) continuous intraoperative monitoring by a physician anesthesiologist or qualified certified registered nurse anesthetist of the eligible recipient's physiological signs;

(d) administration of medication or other pharmacologic therapy as can be required for the diagnosis and treatment of emergencies; and

(e) provision of indicated postoperative anesthesia care.

(2) For MAC, documentation must be available to reflect pre- and post-anesthetic evaluations and intraoperative monitoring.

[~~(2)~~] (3) Medical direction for monitored anesthesia is reimbursed if it meets the medical direction requirements.

[~~E. **Epidural rates:** Reimbursement for an initial epidural is paid using the base units for the procedure plus time units required to perform the initial procedure. No additional units for risk factors or time can be billed for epidural anesthesia. All subsequent epidural injections are paid at one (1) unit per injection.~~]

G. **Medical supervision:** If an anesthesiologist is medically directing more than four CRNAs, the service must be billed as medically supervised rather than medically directed anesthesia services. The MAD payment to the CRNA will be 50 percent of the MAD allowable amount for the procedure. Payment to the anesthesiologist will be based on three base units per procedure when the anesthesiologist is involved in furnishing more than four procedures concurrently or is performing other services while directing the concurrent procedure.

H. **Obstetric anesthesia:** Reimbursement for neuraxial labor anesthesia is paid using the base units plus one unit per hour for neuraxial analgesia management including direct patient contact time (insertion, management of adverse events, delivery, and removal).

I. **Unusual circumstances:** When it is medically necessary for both the CRNA and the anesthesiologist to be completely and fully involved during a procedure, full payment for the services of each provider is allowed. Documentation supporting the medical necessity for both must be noted in the patient's record.

J. **Pre-anesthetic exams/ cancelled surgery:** A pre-anesthetic examination and evaluation of a patient who does not undergo surgery may also be considered for payment. Payment is determined under the physician fee schedule for the medical or surgical service.

[~~E.~~] K. **Performance of standard procedures:** If an anesthesiologist performs procedures which are generally performed by other physicians without specific anesthesia training, such as local anesthesia or an injection, the anesthesiologist is reimbursed the fee schedule amount for performance of the procedure. Reimbursement is not made for base units [;] or units for time [~~or units for risk~~].

L. **Add-on codes for anesthesia:** Add-on codes for anesthesia involving burn excisions or debridement and obstetrical anesthesia are paid in addition to the primary anesthesia code. Anesthesia add-on codes are priced differently than multiple anesthesia codes. Only the base unit of the add-on code will be allowed. All anesthesia time must be reported with the primary anesthesia code. There is an exception for obstetrical anesthesia. MAD requires for the obstetrical add-on codes, that the anesthesia time be separately reported with each of the primary and the add-on codes based on the amount of time appropriately associated with either code. Both the base unit and the time units for the primary and the add-on obstetrical anesthesia codes are recognized.

M. **Anesthesia services furnished by the same physician providing the medical and surgical service:**

(1) A physician who both performs and provides moderate sedation for medical/surgical services will be paid for the conscious sedation consistent with CPT guidelines; however, a physician who performs and provides local or minimal sedation for these procedures cannot bill and cannot be paid separately for the sedation services. The continuum of complexity in anesthesia services (from least intense to most intense) ranges from:

(a) local or topical anesthesia; to

(b) moderate (conscious) sedation; to

(c) regional anesthesia; to

(d) general anesthesia.

(2) Moderate sedation is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation. It does not include minimal sedation, deep sedation or monitored anesthesia care. If the physician performing the procedure also provides moderate sedation for the procedure, payment may be made for conscious sedation consistent with CPT guidelines; however, if the physician performing the procedure provides local or minimal sedation for the procedure, no separate payment is made for the local or minimal sedation service.

N. **Reimbursement for services furnished by interns or residents:**

(1) Reimbursement in an approved teaching program: reimbursement for services furnished by an intern or a resident in a hospital with an approved teaching program or services furnished in another hospital that participates in a teaching program is made through an institutional reimbursement; MAD cannot be billed directly by an intern or a resident for these services.

(2) Services performed in an outpatient and an emergency room setting: medical or surgical services performed by an intern or a resident in a hospital outpatient department or emergency room, that are unrelated to educational services, are reimbursed according to the fee schedule for physician services when all of the following provisions are met:

(a) services are identifiable physician services that are performed by the physician in person; and

(b) services must contribute to the diagnosis or treatment of the eligible recipient's medical condition; and

(c) an intern or resident is fully licensed as a physician; and

(d) services are performed under the terms of a written contract or agreement and are separately identified from services required as part of the training program; and

(e) services are excluded from outpatient hospital costs; when these criteria are met, the services are considered to have been furnished by the practitioner in their capacity as a physician and not as an intern or resident.

(3) Services of an assistant surgeon in an approved teaching program:

(a) MAD does not pay for the services of an assistant surgeon in a facility with approved teaching program since a resident is available to perform services, unless the following exceptional medical

circumstances exist:

(i) an assistant surgeon is needed due to unusual medical circumstances;

(ii) the surgery is performed by a team of physicians during a complex procedure; or

(iii) the presence of, and active care by, a physician of another specialty is necessary during the surgery due to the eligible recipient's medical condition;

(b) this reimbursement rule may not be circumvented by private contractors or agreements entered into by a hospital with a physician or a physician group.

[2/1/95; 8.310.5.15 NMAC - Rn, 8 NMAC 4.MAD.714.6 & A, 6/1/03; A, 11/1/10]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.311.2 NMAC, Sections 3, 6, 8-12, 14, 15 and 16, effective November 1, 2010.

8.311.2.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under [~~Title XIX of~~] the Social Security Act as amended or by state statute. See NMSA 1978, Section 27-2-12 et seq.

[8.311.2.3 NMAC - Rp/E, 8 NMAC 4.MAD.000.3, 1/1/09; A, 11/1/10]

8.311.2.6 OBJECTIVE: The objective of [~~these rules~~] this rule is to provide instructions for the service portion of the New Mexico medical assistance programs.

[8.311.2.6 NMAC - Rp/E, 8 NMAC 4.MAD 000.6, 1/1/09; A, 11/1/10]

8.311.2.8 MISSION STATEMENT: [~~The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of eligible recipients by furnishing payment for quality health services at levels comparable to private health plans.~~] To reduce the impact of poverty on people living in New Mexico and to assure low income and individuals with disabilities in New Mexico equal participation in the life of their communities.

[8.311.2.8 NMAC - Rp/E, 8 NMAC 4.MAD 002, 1/1/09; A, 11/1/10]

8.311.2.9 HOSPITAL SERVICES: [~~MAD~~] The New Mexico medical assistance division (MAD) pays for medically necessary health services furnished to eligible recipients. To help New Mexico [~~MAD~~] eligible recipients receive necessary services, MAD pays for inpatient, outpatient, and emergency services furnished in general hospital settings.

[8.311.2.9 NMAC – Rp/E, 8 NMAC 4.MAD 721, 1/1/09; A, 11/1/10]

8.311.2.10 ELIGIBLE PROVIDERS: [~~Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners of facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD processing contractor. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instruction, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program rules manuals, billing and utilization review instructions and other pertinent material, and to obtain answers to questions found in the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders.~~] Health care to eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to obtain answers to questions related to the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only. Eligible providers include:

A. a general acute care hospital, rehabilitation, extended care or other specialty hospital:

(1) licensed by the New Mexico department of health (DOH), and

(2) participating in the Title XVIII (medicare) program or accredited by the joint commission (previously known as JCAHO accreditation);

B. a rehabilitation inpatient unit or a psychiatric unit in an inpatient hospital (referred to as a prospective payment system exempt unit (PPS-exempt));

C. a free-standing psychiatric hospital may be reimbursed for providing inpatient and outpatient services to an eligible recipient under 21 years of age; see [~~*MAD-742.1*~~] 8.321.2 NMAC, *Inpatient Psychiatric Care in Free-Standing Psychiatric Hospitals;*

D. a border area and out-of-state hospital is eligible to be reimbursed by MAD if its licensure and certification to participate in its state medicaid or medicare program is accepted in lieu of licensing and certification by MAD; and

E. a hospital certified only for emergency services is reimbursed for furnishing inpatient and outpatient emergency services for the period during which the emergency exists.

[8.311.2.10 NMAC - Rp/E, 8 NMAC 4.MAD 721.1, 1/1/09; A, 11/1/10]

8.311.2.11 PROVIDER RESPONSIBILITIES:

A. A provider who furnishes services to [~~a MAD~~] an eligible recipient must comply with all federal and state laws, regulations and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, as well as current program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services. [~~When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for billing and for authorization of services.~~]

B. A provider must verify

that an individual is eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient. See 8.302.1 NMAC, *General Provider Policies*.

C. A provider agrees to be paid by the MAD managed care organizations (MCOs) at any amount mutually-agreed between the provider and MCOs when the provider enters into contracts with MCOs contracting with HSD for the provision of managed care services to the MAD population.

(1) If the provider and the MCOs are unable to agree to terms or fail to execute an agreement for any reason, the MCOs shall be obligated to pay, and the provider [~~one-hundred percent (100%)~~] shall accept, 100 percent of the "applicable reimbursement rate" based on the provider type for services rendered under both emergency and non-emergency situations.

(2) The "applicable reimbursement rate" is defined as the rate paid by HSD to the provider participating in medicaid or other medical assistance programs administered by HSD and excludes disproportionate share hospital and medical education payments.

D. When services are billed to and paid by a MAD fee-for-service coordinated services contractor authorized by HSD, under an administrative services contract, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

[8.311.2.11 NMAC - Rp/E, 8 NMAC 4.MAD.721.2, 1/1/09; A, 11/1/10]

8.311.2.12 COVERED SERVICES: MAD covers inpatient and outpatient hospital, and emergency services which are medically necessary for the diagnosis, the treatment of an illness or injury or as required by the condition of the eligible recipient. MAD covers items or services ordinarily furnished by a hospital for the care and treatment of an eligible recipient. These items or services must be furnished under the direction of [a] an enrolled MAD physician, podiatrist, or dentist with staff privileges in a hospital which is an enrolled MAD provider. Services must be furnished within the scope and practice of the profession as defined by state laws and in accordance with applicable federal and state and local laws and regulations.

[8.311.2.12 NMAC - Rp/E, 8 NMAC 4.MAD 721.3, 1/1/09; A, 11/1/10]

8.311.2.14 INPATIENT SERVICES: MAD coverage of some inpatient services may be conditional or limited.

A. **Medically warranted days:** A general hospital is not reimbursed for days of acute level inpatient services furnished to an eligible recipient as a result of difficulty in securing alternative placement. A lack of nursing facility placement is not sufficient grounds for continued acute-level hospital care.

B. **Awaiting placement days:**

(1) When the MAD utilization review (UR) contractor determines that an eligible recipient no longer meets the care criteria in a rehabilitation, extended care or other specialty hospital or PPS exempt rehabilitation hospital but requires a nursing facility level of care which may not be immediately located, those days during which the eligible recipient is awaiting placement in a lower level of care facility are termed "awaiting placement days". Payment to the hospital for awaiting placement days is made at the weighted average rate paid by MAD for the level of nursing facility services required by the eligible recipient (high NF or low NF).

(2) When the MAD UR contractor determines that a recipient under 21 years of age no longer meets acute care criteria and it is verified that an appropriate reviewing authority has made a determination that the eligible recipient requires a residential level of care which may not be immediately located, those days during which the eligible recipient is awaiting placement to the lower level of care are termed "awaiting placement days". MAD does not cover residential care for individuals over 21 years of age.

(3) Payment to the hospital for awaiting placement days is made at the weighted average rate paid by MAD for residential services that may have different levels of classification based on the medical necessity for the placement of the eligible recipient. See 8.302.5 NMAC, [~~*MAD Billing Instructions*~~] *Prior Authorization and Utilization Review*. A separate claim form must be submitted for awaiting placement days.

(4) MAD does not pay for any ancillary services for "awaiting placement days". The rate paid is considered all inclusive. Medically necessary physician visits[~~,~~] or**,** in the case of the eligible recipient under [~~twenty-one (21)~~] 21 years of age requiring residential services, licensed Ph.D. psychologist visits, are not included in this limitations.

C. **Private rooms:** A hospital is not reimbursed for the additional cost of a private room unless the private room is medically necessary to protect the health of the eligible recipient or others.

D. **Services performed in an outpatient setting:** MAD covers certain procedures performed in an office, clinic, or as an outpatient institutional service which are alternatives to hospitalization. Generally, these procedures are those for which an overnight stay in a hospital is seldom necessary.

(1) An eligible recipient may be hospitalized if there is an existing medical condition which predisposes the eligible recipient to complications even with minor procedures.

(2) All claims for one- or two-day stays for hospitalization are subject to pre-payment or post-payment review.

E. **Observation stay:** If a physician orders an eligible recipient to remain in the hospital for less than [~~twenty-four (24)~~] 24 hours, the stay is not covered as inpatient admission, but is classified as an observation stay. An observation stay is considered an outpatient service.

(1) The following are exemptions to the general observation stay definition:

(a) the eligible recipient dies;

(b) documentation in medical records indicates that the eligible recipient left against medical advice or was removed from the facility by his legal guardian against medical advice;

(c) an eligible recipient is transferred to another facility to obtain necessary medical care unavailable at the transferring facility; or

(d) an inpatient admission results in delivery of a child.

(2) MAD or its designee determines whether an eligible recipient's admission falls into one of the exempt categories or considers it to be a one- or two-day stay.

(a) If an admission is considered an observation stay, the admitting hospital is notified that the services are not covered as an inpatient admission.

(b) A hospital must bill these services as outpatient observation services. However, outpatient observation services must be medically necessary and must not involve premature discharge of an eligible recipient in an unstable medical condition.

(3) The hospital or attending physician can request a re-review and reconsideration of the observation stay decision. See MAD 953, *Reconsideration of Utilization Review Decisions.*

(4) The observation stay review does not replace the review of one- and two-day stays for medical necessity.

(5) MAD does not cover medically unnecessary admissions, regardless of length of stay.

F. **Review of hospital admissions:** All cases requiring a medical peer review decision on appropriate use of hospital resources, quality of care or

appropriateness of admission, transfer into a different hospital, and readmission are reviewed by MAD or its designee. MAD or its designee performs a medical review to verify the following:

(1) admission to acute care hospital is medically necessary;

(2) all hospital services and surgical procedures furnished are appropriate to the eligible recipient's condition and are reasonable and necessary to the care of the eligible recipient;

(3) patterns of inappropriate admissions and transfers from one hospital to another are identified and are corrected; hospitals are not reimbursed for inappropriate admissions or transfers; and

(4) the method of payment and its application by a hospital does not jeopardize the quality of medical care.

G. **Non-covered services:** MAD does not cover the following specific inpatient benefits:

(1) a hospital service which is not considered medically necessary by MAD or its designee for the condition of the eligible recipient;

(2) a hospital service that requires prior authorization for which the approval was not requested except in cases with extenuating circumstances as granted by MAD or its designee;

(3) a hospital service which is furnished to an individual who was not eligible for MAD services on the date of service;

(4) an experimental or investigational procedure, technology or therapy and the service related to it, including hospitalization, anesthesiology, laboratory tests, and imaging services; see MAD-765, *Experimental or Investigational Procedures or Therapies*;

(5) a drug classified as "ineffective" by the federal food and drug administration;

(6) private duty or incremental nursing services;

(7) laboratory specimen handling or mailing charges; and

(8) formal educational or vocational training services which relate to traditional academic subjects or training for employment.

H. **Covered services in hospitals certified for emergency services-only:** Certain inpatient and outpatient services may be furnished by a hospital certified to participate in the Title XVIII (medicare) program as an emergency hospital. MAD reimburses a provider only for treatment of conditions considered to be medical or surgical emergencies. "Emergency" is defined as a condition which develops unexpectedly and needs immediate medical attention to prevent the death or serious health impairment of the eligible recipient which necessitates the use of the most accessible hospital equipped to furnish emergency services.

(1) MAD covers the full range of inpatient and outpatient services furnished to an eligible recipient in an emergency situation in a hospital which is certified for emergency services-only.

(2) MAD reimbursement for emergency services furnished in a hospital certified for an emergency services-only is made for the period during which the emergency exists.

(a) Documentation of the eligible recipient's condition, the physician's statement that emergency services were necessary, and the date when, in the physician's judgment, the emergency ceased, must be attached to the claim form.

(b) An emergency no longer exists when it becomes safe from a medical standpoint to move the eligible recipient to a certified inpatient hospital or to discharge the eligible recipient.

(c) Reimbursement for services in an emergency hospital is made at a percentage of reasonable charges as determined by HSD. No retroactive adjustments are made.

I. **Patient self determination act:** An adult eligible recipient must be informed of his right to make health decisions, including the right to accept or refuse medical treatment, as specified in the Patient Self-Determination Act. See 8.302.1 NMAC, *General Provider Policies*.

J. **Psychiatric services furnished to an eligible recipient under 21 years of age in PPS-exempt units of acute care hospitals:** Services furnished to [~~a MAD~~] an eligible recipient must be under the direction of a physician. In the case of psychiatric services furnished to an eligible recipient under 21 years of age, these services must be furnished under the direction of board eligible/board certified psychiatrist, or a licensed psychologist working in collaboration with a similarly qualified psychiatrist. The psychiatrist must conduct an evaluation of the eligible recipient, in person, within 24 hours of admission. In the case of an eligible recipient under 12 years of age, the psychiatrist must be board eligible/board certified in child or adolescent psychiatry. The requirement for the specified psychiatrist for an eligible recipient under age 12 and under 21 years of age may be waived when all of the following conditions are met:

(1) the need for admission is urgent or emergent, and transfer or referral to another provider poses an unacceptable risk for adverse patient outcomes; and

(2) at the time of admission, a board eligible/board certified psychiatrist, or in the case of an eligible recipient under 12 years of age, a child psychiatrist is not accessible in the community in which the facility is located; and

(3) another facility which is able to furnish a board eligible/board certified psychiatrist, or in the case of an eligible recipient under 12 years of age, a child psychiatrist, is not available or accessible in the community; and

(4) the admission is for stabilization only and transfer arrangements to the care of a board eligible/ board certified psychiatrist, or in the case of an eligible recipient under 12 years of age, a child psychiatrist is made as soon as possible with the understanding that if the eligible recipient needs to transfer to another facility, the actual transfer will occur as soon as the eligible recipient is stable for transfer, in accordance with professional standards.

K. **Reimbursement for inpatient services:** MAD reimburses for inpatient hospital services using different methodologies. See 8.311.3 NMAC, *Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services.*

(1) All services or supplies furnished during the hospital stay are reimbursed by the hospital payment amount and no other provider may bill for services or supplies; an exception to this general rule applies to durable medical equipment delivered for discharge and ambulance transportation.

(2) A physician's services are not reimbursed to a hospital under Hospital Services regulations, but may be payable as a professional component of a service. See 8.310.2 NMAC, *Medical Services Providers*, for information on the professional component of services.

(3) Transportation services are billed as part of a hospital claim if the hospital is DRG reimbursed and transportation is necessary during the inpatient stay.

(a) Transportation is included in a DRG payment when an eligible recipient is transported to a different facility for procedure(s) not available at the hospital where the eligible recipient is a patient.

(b) Exceptions are considered for air ambulance services operated by a facility when air transportation constitutes an integral part of the medical services furnished by the facility. See 8.324.7 NMAC, *Transportation Services.*

L. **Reimbursement limitations for capital costs:** Reimbursement for capital costs follows the guidelines set forth in HIM-15. See P.L. 97-248 (TEFRA). In addition, MAD applies the following restrictions for new construction:

(1) The total basis of depreciable assets does not exceed the median cost of constructing a hospital as listed in an index acceptable to MAD, adjusted for New Mexico costs and for inflation in the construction industry from the date of publication to the date the provider is

expected to become a MAD provider.

(2) The cost of construction is expected to include only the cost of buildings and fixed equipment.

(3) A reasonable value of land and major movable equipment is added to obtain the value of the entire facility.

[8.311.2.14 NMAC - Rp/E, 8 NMAC 4.MAD 721.5, 1/1/09; A, 11/1/10]

8.311.2.15 OUTPATIENT SERVICES: MAD covers outpatient services which are medically necessary for prevention, diagnosis or rehabilitation as indicated by the condition of an eligible recipient. Services must be furnished within the scope and practice of a professional provider as defined by state laws and regulations.

A. **Outpatient covered services:** Covered hospital outpatient care includes the use of minor surgery or cast rooms, intravenous infusions, catheter changes, first aid care of injuries, laboratory and radiology services, and diagnostic and therapeutic radiation, including radioactive isotopes. A partial hospitalization program in a general hospital psychiatric unit is considered under outpatient services. See 8.321.5 NMAC, *Outpatient Psychiatric Services and Partial Hospitalization.*

B. **Outpatient noncovered services:** MAD does not cover the following specific outpatient benefits:

(1) outpatient hospital services not considered medically necessary for the condition of the eligible recipient;

(2) outpatient hospital services that require prior approval for which the approval was not requested except in cases with extenuating circumstances as granted by MAD or its designee;

(3) outpatient hospital services furnished to an individual who was not eligible for MAD services on the date of service;

(4) experimental or investigational procedures, technologies or therapies and the services related to them, including hospitalization, anesthesiology, laboratory tests, and imaging services; see 8.325.6 NMAC, *Experimental or Investigational Procedures or Therapies*;

(5) drugs classified as "ineffective" by the federal food and drug administration;

(6) laboratory specimen handling or mailing charges; and

(7) formal educational or vocational services which relate to traditional academic subjects or training for employment.

C. **MCO payment rates:** If a provider and an MCO are unable to agree to terms or fail to execute an agreement for any reason, the MCO shall be obliged to pay, and the provider shall accept, 100 percent of the "applicable reimbursement rate" based on the provider type for services rendered under both emergency and non-emergency situations. The "applicable reimbursement rate" is defined as the rate paid by HSD to the provider participating in medicaid or other medical assistance programs administered by HSD and excludes disproportionate share hospital and medical education payments.

[~~C.~~] D. **Prior authorization:** Certain procedures or services performed in outpatient settings can require prior approval from MAD or its designee. Outpatient physical, occupational, and speech therapies services require prior authorization.

[~~D.~~] E. **Reimbursement for outpatient services:** [~~Effective January 1, 2009,~~] Effective November 1, 2010, outpatient hospital services are reimbursed using outpatient prospective payment system (OPPS) rates. The OPPS rules for payment for packaged services and separately reimbursed services are based on the medicare ambulatory payment classification (APC) methodology.

(1) Reimbursement for laboratory [~~and~~] services, radiology services, and drug items will not exceed maximum levels established by MAD. Hospitals must identify drugs items purchased at 340B prices.

[~~(2) Reimbursement for oral medications dispensed in a hospital outpatient setting is limited to usual charges up to a maximum of two dollars per visit per eligible recipient.~~

~~(3)~~] (2) Services or supplies furnished by a provider under contract or through referral must meet the contract services requirements and be reimbursed based on approved methods. See 8.302.2 NMAC, *Billing For Medicaid Services.*

[~~(4)~~] (3) [~~For MAD fee-for-service (FFS) contracted providers only, when applicable due to federal requirements, the OPPS rates will be implemented following approval of the New Mexico state plan by the centers for medicare and medicaid services (CMS). Until implemented, reimbursement for a MAD fee-for-service provider will be made using the medicare allowable cost method, reducing medicare allowable costs by three percent (3%). The interim rate of payment is established by MAD.~~] For services not reimbursed using the outpatient prospective payment system (OPPS) methodology or fee schedule, reimbursement for a MAD fee-for-service provider will be made using the medicare allowable cost method, reducing medicare allowable costs by three percent. An interim rate of payment is established by MAD. A rate of payment for providers not subject to the cost settle process is also established by MAD. Both rates are established after considering available cost to charge ratios, payment levels made by other payers and MAD payment levels for services of similar cost, complexity and duration.

[8.311.2.15 NMAC - Rp/E, 8 NMAC 4.MAD 721.6, 1/1/09; A, 11/1/10]

8.311.2.16 EMERGENCY ROOM SERVICES: MAD covers emergency room services which are medically necessary for the diagnosis and treatment of medical or surgical emergencies to an eligible recipient and which are within the scope of the MAD program.

A. **Covered emergency services:** [~~A medical or surgical emergency is defined as a condition which develops unexpectedly and requires immediate medical attention to prevent death or serious impairment to the health of an eligible recipient.~~] An emergency condition is a medical or behavioral health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to body function or serious dysfunction of any bodily organ or part.

B. **Retrospective review:** An emergency room service may be subject to prepayment or post-payment review. [~~verifying whether or not the circumstances warranted emergency room service. If it is determined that an emergency service was furnished in a non-emergency situation, the emergency room charge may be denied.~~

~~(1) The eligible recipient or their personal representative is responsible for payment of a denied emergency room charge and may be billed directly by the provider.~~

~~(2) The use of an ancillary service is reviewed and paid if medically appropriate for the condition treated, even though the condition was not an emergency. An ancillary service which is denied as not medically appropriate may not be billed to the eligible recipient or their personal representative.~~] A provider, including an enrolled provider, a non-enrolled provider, a managed care organization provider, or an out of network provider cannot bill an eligible recipient for emergency room services including diagnostic and ancillary services which have been denied due to lack of medical necessity or lack of being an emergency except as specifically allowed by 8.302.2 NMAC, *Billing for Medicaid Services*. When an eligible recipient has identified himself or herself to a provider as a medicaid eligible recipient and is enrolled in a managed care organization, the provider of services must accept and adhere to the provisions of 42 CFR 438 Subpart C Enrollee Rights and Protections which state the administrative

and payment responsibilities of a managed care organization and limit the financial responsibilities that can be passed on to an eligible recipient. Payment may be limited to medically necessary diagnostic and treatment services to sufficiently assess the recipient's condition and need for emergency services, the duration of a condition, and available alternatives to emergency room services.

C. **Prior authorization:** Some services or procedures performed in an emergency room setting need prior approval from MAD or its designee. Procedures that require prior approval in non-emergency settings also require prior approval in emergency settings.

D. **Noncovered emergency services:** MAD does not cover the following specific emergency services:

(1) [~~emergency~~] diagnostic and other ancillary services which are not considered medically necessary as emergency services;

(2) emergency services furnished to individuals who were not eligible for MAD services on the date of service;

(3) experimental or investigational procedures, technologies or therapies and the services related to them, including hospitalization, anesthesiology, laboratory tests and imaging services; see 8.325.6 NMAC, *Experimental or Investigational Procedures or Therapies*;

(4) drugs classified as "ineffective" by the federal food and drug administration; and

(5) laboratory specimen handling or mailing charges.

E. **Reimbursement for emergency room service:** An emergency service furnished by an eligible provider is reimbursed [~~at the outpatient rate~~] as outpatient hospital services. [~~See Section D of 8.311.2 NMAC~~] See Subsection D of 8.311.2.15 NMAC, *reimbursement for outpatient services*.

(1) An emergency room service furnished in a DRG-reimbursed hospital in conjunction with an inpatient admission is included with the charges for inpatient care. In this case, a payment for an emergency room service is included in the DRG rate.

(2) A physician's service furnished in an emergency room is not reimbursed to a hospital but may be paid as a professional component of a service. See 8.310.2 NMAC, *Medical Services Providers*.

(3) A service furnished in an urgent care center of a hospital which does not meet the definition of an emergency, may not be submitted as an emergency room service.

[8.311.2.16 NMAC - Rp/E, 8 NMAC 4.MAD 721.7, 1/1/09; A, 11/1/10]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.321.2 NMAC, Sections 1, 3, 5, 6, 8 - 17, effective November 1, 2010. This rule was also renumbered and reformatted from 8 NMAC 4 MAD.742.1 and MAD.000 to comply with current NMAC requirements.

8.321.2.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[8.321.2.1 NMAC - Rp, 8 NMAC 4.MAD.000.1 & A, 11/1/10]

8.321.2.3 STATUTORY AUTHORITY: The New Mexico medicaid program [~~is~~] and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under [~~Title XIX of~~] the Social Security Act, as amended and by state human services department pursuant to state statute. See Sections 27-2-12 et seq. NMSA 1978 [~~(Repl. Pamp. 1991)~~].

[8.321.2.3 NMAC - Rp, 8 NMAC 4.MAD.000.3 & A, 11/1/10]

8.321.2.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.

[8.321.2.5 NMAC - Rp, 8 NMAC 4.MAD.000.5 & A, 11/1/10]

8.321.2.6 OBJECTIVE: The objective of [~~these regulations~~] this rule is to provide [~~policies~~] instruction for the service portion of the New Mexico [~~medicaid~~] medical assistance program. [~~These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.~~]

[8.321.2.6 NMAC - Rp, 8 NMAC 4.MAD.000.6 & A, 11/1/10]

8.321.2.8 MISSION STATEMENT: [~~The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.~~] To reduce the impact of poverty on people living in New Mexico and to assure low income and individuals with disabilities in New Mexico equal participation in the lives of their communities.

[8.321.2.8 NMAC - Rp, 8 NMAC 4.MAD.002 & A, 11/1/10]

8.321.2.9 INPATIENT PSYCHIATRIC CARE IN FREESTANDING PSYCHIATRIC HOSPITALS: [~~The New Mexico medicaid program (medicaid)~~] MAD pays for medically necessary health services furnished to eligible recipients. To help New Mexico medicaid recipients under [~~twenty-one (21)~~] 21 years of age receive necessary mental health services, [~~the New Mexico~~] medical assistance division (MAD) pays for inpatient psychiatric care furnished in freestanding psychiatric hospitals, as part of early and periodic screening, diagnosis and treatment (EPSDT) services [42 CFR Section 441.57]. If the eligible recipient is receiving services immediately before he or she reaches the age of 21 years services may continue based on the following conditions: (1) up to the date the eligible recipient no longer requires the services or (2) the date the eligible recipient reaches the age of 22 years, whichever comes first. The need for inpatient psychiatric care in freestanding psychiatric hospitals must be identified in the tot to teen healthcheck screen or other diagnostic evaluation furnished through a healthcheck referral. [~~This section describes eligible providers, covered services, service limitations, and general reimbursement methodology.~~]

[8.321.2.9 NMAC - Rp, 8 NMAC 4.MAD.742.1 & A, 11/1/10]

8.321.2.10 ELIGIBLE PROVIDERS:

[~~A. Upon approval of New Mexico medical assistance program provider participation agreements by MAD, freestanding psychiatric hospitals are eligible to be reimbursed for services to recipients under twenty-one (21) years of age through EPSDT, if:~~

~~(1) the hospital is accredited by the joint commission of accreditation of healthcare organizations (JCAHO) and licensed by the licensing and certification bureau of the New Mexico department of health (DOH); and~~

~~(2) the hospital has a written utilization review (UR) plan in effect which provides for the review of the recipient's need for the furnished services that meet federal requirements. See 42 CFR Sections 456.201-456.245.~~

~~B. For out-of-state hospitals, JCAHO accreditation and licensed in their own state is accepted in lieu of licensing by New Mexico. MAD must approve the out-of-state hospital's New Mexico medical assistance program provider participation application before it furnishes services.~~

~~C. Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD. Providers are responsible for ensuring that they have received these materials and for updating them as new materials~~

~~are received from MAD.~~] Health care to eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico medical assistance division (MAD) provider participation agreement by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only.

A. An eligible provider must be accredited by at least one of the following:

(1) the joint commission (JO) (formerly known as joint commission on accreditation of healthcare organizations); or

(2) the council on accreditation of services for families and children (COA); or

(3) the commission on accreditation of rehabilitation facilities (CARF); or

(4) other accrediting organizations recognized by HSD as having comparable standards.

B. An eligible provider must be licensed and certified by the licensing and certification bureau of the New Mexico department of health (DOH) or the comparable agency in another state.

C. An eligible provider must have a written utilization review (UR) plan in effect which provides for review of an eligible recipient's need for the center's services that meet federal requirements; see 42 CFR Sections 456.201 through 456.245.

D. An eligible provider must be an approved MAD provider before it furnishes services; see 42 CFR Sections 456.201 through 456.245.

[8.321.2.10 NMAC - Rp, 8 NMAC 4.MAD.742.11 & A, 11/1/10]

8.321.2.11 PROVIDER RESPONSIBILITIES: [~~Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See Section MAD-701, GENERAL PROVIDER POLICIES. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance. Providers must maintain records which are sufficient to fully disclose the extent and nature of the services furnished to recipients. See Section MAD-701, GENERAL PROVIDER POLICES. Providers must maintain records documenting the source and amount of any financial resources collected or received by providers on behalf of recipients, including federal or state governmental sources and document receipt and disbursement of recipient funds.~~]

A. A provider who furnishes services to a medicaid or other health care program eligible recipient must comply with all federal and state laws, regulations, and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider also must conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services.

B. A provider must verify that an individual is eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient.

C. A provider agrees to be paid by the MAD managed care organizations (MCOs) at any amount mutually-agreed upon between the provider and MCOs when the provider enters into contracts with MCOs contracting with HSD for the provision of managed care services to the MAD population.

(1) If the provider and the MCOs are unable to agree to terms or fail to execute an agreement for any reason, the MCOs shall be obligated to pay, and the provider shall accept, 100 percent of the "applicable reimbursement rate" based on the provider type for services rendered under both emergency and non-emergency situations.

(2) The "applicable reimbursement rate" is defined as the rate paid by HSD to the provider participating in medicaid or other medical assistance programs administered by HSD and excludes disproportionate share hospital and medical education payments.

D. When services are billed to and paid by a MAD fee-for-service coordinated services contractor authorized by HSD under an administrative services contract, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

[8.321.2.11 NMAC - Rp, 8 NMAC 4.MAD.742.12 & A, 11/1/10]

8.321.2.12 COVERED SERVICES: [~~Medicaid~~] MAD covers those inpatient psychiatric hospital services furnished in freestanding psychiatric hospitals which are medically necessary for the diagnosis [~~and/or~~] or treatment of mental illness as required by the condition of the eligible recipient. These services must be furnished by eligible providers within the scope and practice of their profession as defined by state law and in accordance with federal regulations. See 42 CFR Section 441 Subpart D.

A. Services must be furnished under the direction of a physician. In the case of eligible recipients under [~~twenty-one (21)~~] 21 years of age, these services must be furnished under the direction of a board prepared/board eligible/board certified psychiatrist or a licensed psychologist working in collaboration with a similarly qualified psychiatrist.

B. The psychiatrist must conduct an evaluation of the eligible recipient, in person, within [~~twenty-four (24)~~] 24 hours of admission. In the case of eligible recipients under [~~twelve (12)~~] 12 years of age, the psychiatrist must be board prepared/board eligible/board certified in child or adolescent psychiatry.

C. The requirement for the specified psychiatrist for eligible recipients under age [~~twelve (12)~~] 12 and eligible recipients under [~~twenty-one (21)~~] 21 years of age can be waived when all of the following conditions are met:

(1) the need for admission is urgent or emergent, and transfer or referral to another provider poses an unacceptable risk for adverse patient outcomes;

(2) at the time of admission, a board prepared/board eligible/board certified psychiatrist, or in the case of [~~a~~] an eligible recipient under [~~twelve (12)~~] 12 years of age, a child psychiatrist is not accessible in the community in which the [~~facilities~~] facility is located;

(3) another facility which is able

to furnish a board prepared/board eligible/ board certified psychiatrist, or in the case of [~~a~~] an eligible recipient under [~~twelve (12)~~] 12 years of age, a child psychiatrist, is not available or accessible in the community; and

(4) the admission is for stabilization only and transfer arrangement to the care of a board prepared/board eligible/ board certified psychiatrist, or in the case of [~~recipients under twelve (12)~~] an eligible recipient under 12 years of age, a child psychiatrist [~~are~~] is made as soon as possible under the understanding that if the eligible recipient needs transfer to another [~~facilities~~] facility, the actual transfer will occur as soon as the eligible recipient is stable for transfer, in accordance with professional standards.

[~~B.~~] D. The following services must be furnished by freestanding hospitals to receive reimbursement from [~~medicaid~~] MAD. [~~Payment for performance of these required services is included in the hospital's reimbursement rate.~~]

(1) performance of necessary evaluations and psychological testing for the development of the treatment plan, while ensuring that evaluations already performed are not repeated;

(2) regularly scheduled structured counseling and therapy sessions for eligible recipients, groups, families, or multifamily groups based on individualized needs, as specified in the treatment plan;

(3) facilitation of age-appropriate skills development in the areas of household management, nutrition, personal care, physical and emotional health, basic life skills, time management, school, attendance and money management;

(4) assistance to [~~recipients~~] an eligible recipient in self- administration of medication in compliance with state policies and procedures;

(5) appropriate staff available on a [~~twenty-four (24)~~] 24-hour basis to respond to crisis situations, determine the severity of the situation, stabilize [~~recipients~~] eligible recipient by providing support, make referrals, as necessary, and provide follow-up;

(6) a consultation with other professionals or allied care givers regarding a specific eligible recipient;

(7) non-medical transportation services needed to accomplish treatment objectives; and

(8) therapeutic services to meet the physical, social, cultural, recreational, health maintenance, and rehabilitation needs of recipients; and

E. payment for performance of these required services is included in the hospital's reimbursement rate.

[8.321.2.12 NMAC - Rp, 8 NMAC 4.742.13 & A, 11/1/10]

8.321.2.13 NONCOVERED SERVICES:

[~~A.~~] Services furnished in freestanding psychiatric hospitals are subject to the limitations and coverage restrictions which exist for other [~~medicaid~~] MAD services. [~~See Section MAD-602, GENERAL NONCOVERED SERVICES.~~] See 8.301.3 NMAC, *Medicaid General Noncovered Services*. [~~Medicaid~~] MAD does not cover the following specific services for an eligible recipient in freestanding psychiatric hospitals:

[~~(1)~~] A. services not considered medically necessary for the condition of the eligible recipient, as determined by MAD or its designee;

B. conditions defined only by V codes in the current version of the international classification of diseases (ICD) or the current version of diagnostic statistical manual (DSM);

[~~(2)~~] C. services for which prior [~~approval~~] authorization was not obtained;

[~~(3)~~] D. services in freestanding psychiatric hospital for [~~medicaid recipients twenty-two (22)~~] eligible recipient 21 years of age or older;

[~~(4)~~] E. services furnished after the determination by MAD or its designee has been made that the eligible recipient no longer needs hospital care;

[~~(5)~~] F. formal educational or vocational services related to traditional academic subjects or vocational training; [~~medicaid~~] MAD only covers non-formal education services if they are part of an active treatment plan for [~~recipients~~] an eligible recipient under the age of [~~twenty-one (21)~~] 21 receiving inpatient psychiatric services; see 42 CFR Section 441.13(b);

[~~(6)~~] G. experimental or investigational procedures, technologies, or non-drug therapies and related services or treatment;

[~~(7)~~] H. drugs classified as "ineffective" by the FDA drug evaluation; [~~and~~]

[~~(8)~~] I. activity therapy, group activities, and other services primarily recreational or diversional in nature;

[~~B.~~] J. [~~Medicaid~~] MAD covers "awaiting placement days" in freestanding psychiatric hospitals when the MAD utilization review (UR) contractor determines that [~~a~~] an eligible recipient under [~~twenty-one (21)~~] 21 years of age no longer meets acute care criteria and the children's mental health services review panel determines that the eligible recipient requires a psychosocial residential level of care which cannot be immediately located;

[~~C.~~] K. those days during which the eligible recipient is awaiting placement to the lower level of care are termed awaiting placement days; and

[~~D.~~] L. payment to the hospital for awaiting placement days is made at the weighted average rate paid by [~~medicaid~~] MAD for psychosocial accredited residential services for eligible recipients classified as level III, IV, or IV+ plus five percent [~~(5%)~~]; a separate claim form must be submitted for awaiting placement days.

[8.321.2.13 NMAC - Rp, 8 NMAC 4.MAD.742.14 & A, 11/1/10]

8.321.2.14 TREATMENT PLAN: [~~An individualized~~] The treatment plan must be developed by a team of professionals in consultation with an eligible recipient, [~~parents~~] parent(s), legal [~~guardians~~] guardian(s) or others in whose care the eligible recipient will be released after discharge. The plan must be developed within [~~fourteen (14) days~~] 72 hours of admission of the eligible recipient's admission to freestanding psychiatric hospitals.

A. The interdisciplinary team must review the treatment plan at least every [~~thirty (30)~~] five calendar days.

[~~B. The following must be contained in the treatment plan or documents used in the development of the treatment plan. The treatment plan and all supporting documentation must be available for review in the recipient's file:~~

~~(1) statement of the nature of the specific problem and the specific needs of the recipient;~~

~~(2) description of the functional level of the recipient including the following:~~

~~(a) mental status assessment;~~

~~(b) intellectual function assessment;~~

~~(c) psychological assessment;~~

~~(d) educational assessment;~~

~~(e) vocational assessment;~~

~~(f) social assessment;~~

~~(g) medication assessment; and~~

~~(h) physical assessment;~~

~~C. statement of the least restrictive conditions necessary to achieve the purposes of treatment;~~

~~D. description of intermediate and long-range goals, with a projected timetable for their attainment and the duration and scope of therapy services;~~

~~E. statement and rationale of the treatment plan for achieving these intermediate and long-range goals, including the provision for review and modification of the plan;~~

~~F. specification of staff responsibilities, description of proposed staff involvement, and orders for medication(s), treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the recipient; and~~

~~G. criteria for release to less restrictive settings for treatment, discharge~~

~~plans, criteria for discharge, and projected date of discharge.~~]

B. The following must be contained in the treatment plan or documents used in the development of the treatment plan. The treatment team must consist of at a minimum (see CFR 42 441.156(c-d):

(1) either a:

(a) board eligible or board certified psychiatrist; or

(b) clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy; or

(c) a physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases, and a psychologist who has a master's degree in clinical psychology or who has been certified by the state or its licensing board; and

(2) the team must also include one of the following:

(a) a psychiatric social worker; or

(b) an occupational therapist who is licensed by the state and who has specialized training in treating an eligible recipient under the age of 21 years of age with a severe emotional disturbance (SED); or

(c) a registered nurse with specialized training or one year's experience in treating eligible recipients under the age of 21 years; or

(d) a psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state's licensing board.

C. The treatment plan and all supporting documentation must be available for review in the eligible recipient's file. The treatment plan of care must at a minimum:

(1) be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral and developmental aspects of the eligible recipient's situation and reflects the need for inpatient psychiatric care; and

(2) be developed by a team of professionals specified in Subsection A of 8.321.2.14 NMAC in consultation with the eligible recipient and, his or her parents, legal guardians, or others in whose care he or she will be released after discharge; and

(3) state treatment objectives; and

(4) prescribe an integrated program of therapies, activities, and experiences designed to meet the objectives; and

(5) include, at the appropriate time, post-discharge plans and coordination of inpatient services with partial discharge plans and related community services to ensure continuity of care with the eligible recipient's family, school, and community upon discharge;

(6) statement of the least restrictive conditions necessary to achieve the purposes of treatment;

(7) description of intermediate and long-range goals, with a projected timetable for their attainment and the duration and scope of therapy services;

(8) statement and rationale of the treatment plan for achieving these intermediate and long-range goals, including the provision for review and modification of the plan;

(9) specification of staff responsibilities, description of proposed staff involvement, and orders for medication(s), treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the eligible recipient; and

(10) criteria for release to less restrictive settings for treatment, discharge plans, criteria for discharge, and projected date of discharge.

[8.321.2.14 NMAC - Rp, 8 NMAC 4.MAD.742.15 & A, 11/1/10]

8.321.2.15 PRIOR [~~APPROVAL~~] AUTHORIZATION AND UTILIZATION REVIEW: All [~~medicaid~~] MAD services are subject to utilization review for medical necessity, inspection of care, and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. [~~See Section MAD-705, PRIOR APPROVAL AND UTILIZATION REVIEW. Once enrolled, providers receive instructions and documentation forms necessary for prior approval and claims processing.~~] See 8.302.5 NMAC, *Prior Authorization and Utilization Review.* Once enrolled, a provider receives instructions on how to access utilization review documents necessary for prior approval and claims processing.

A. All inpatient services for [~~recipients under twenty-one (21)~~] an eligible recipient under 21 years of age in a freestanding psychiatric hospital, require prior [~~approval~~] authorization from MAD or its designee. Services for which prior [~~approval~~] authorization was obtained remain subject to utilization review at any point in the payment process.

B. Prior [~~approval~~] authorization of services does not guarantee that individuals are eligible for [~~medicaid~~] MAD services. Providers must verify that [~~individuals are~~] an individual is eligible for [~~medicaid~~] MAD services at the time services are furnished and determine if [~~medicaid recipients have~~] the eligible recipient has other health insurance.

C. [~~Providers who disagree~~] A provider who disagrees with prior [~~approval~~] authorization request denials or other review decisions can request a re-review and a reconsideration. See Section MAD-953, *Reconsideration of Utilization Review Decision.*

[8.321.2.15 NMAC - Rp, 8 NMAC 4.MAD.742.16 & A, 11/1/10]

8.321.2.16 DISCHARGE PLANNING: Plans for discharge must be included in the eligible recipient's treatment plan. Discharge must not be delayed because post-hospital planning is neglected. If the eligible recipient [~~has a case manager~~] will receive services in the community or in the custody of the children, youth, and families department (CYFD), the discharge must be coordinated with those individuals or agencies responsible for post-hospital placement and services. The discharge plan must consider related community services to ensure continuity of care with the eligible recipient's family, school and community.

[8.321.16 NMAC - Rp, 8 NMAC 4 MAD 742.17 & A, 11/1/10]

8.321.2.17 REIMBURSEMENT:

[~~A.~~] Freestanding psychiatric hospital service providers must submit claims for reimbursement on the [~~UB92~~] UB04 claim form or its successor. [~~See Section MAD-702, BILLING FOR MEDICAID SERVICES.~~] See 8.302.2 NMAC, *Billing for Medicaid Services.* Once enrolled, providers receive instructions on documentation, billing, and claims processing.

[~~B.~~] A. Reimbursement rates for New Mexico freestanding psychiatric hospitals are based on TEFRA provisions and principles of reimbursement. See [~~Section H~~] 8.311.3.11 NMAC, *payment methodology for PPS-exempt hospitals and exempt units within hospitals*, and [~~Section V~~] 8.311.3.14 NMAC, *determination of actual, allowable and reasonable costs*, contained in [~~Section MAD-721-D~~] 8.311.3 NMAC, *Methods and Standards for Establishing Payment - Inpatient Hospital Services*.

[~~C.~~] B. [~~Reimbursement rates for hospitals outside New Mexico are seventy percent (70%) of billed charges or a negotiated rate, not to exceed the rate of federal programs such as CHAMPUS or medicare. Negotiation of rates is allowed only when MAD determines that the hospital provides a unique service required by recipients.~~] Reimbursement rates for hospitals not subject to cost settlement are paid at a percent of billed charges on a fee schedule rate established by the department after considering available cost-to-charge ratios, payment levels made by other payers; and MAD payment levels for services of similar cost, complexity and duration. Negotiation of rates is allowed only when MAD determines that the hospital provides a unique service required by an eligible recipient.

[~~D.~~] C. Reimbursement rates

for services furnished by psychiatrists and licensed Ph.D. psychologists in freestanding psychiatric hospitals are contained in that provider section. [~~See Section MAD-717, Psychiatric and Psychological Services.~~] See 8.310.8 NMAC, *Behavioral Health Professional Services*. Services furnished by psychiatrists and psychologists in freestanding psychiatric hospitals cannot be included as inpatient psychiatric hospital charges.
[8.321.2.17 NMAC - Rp, 8 NMAC 4.MAD.742.18 & A, 11/1/10]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 29 STANDARDS FOR EXCELLENCE
PART 13 ENGLISH LANGUAGE ARTS COMMON CORE STANDARDS

6.29.13.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.29.13.1 NMAC - N, 10-29-2010]

6.29.13.2 SCOPE: All public schools, state educational institutions and educational programs conducted in state institutions other than the New Mexico military institute.
[6.29.13.2 NMAC - N, 10-29-2010]

6.29.13.3 STATUTORY AUTHORITY:

A. Section 22-2-2 NMSA 1978 grants the department the authority and responsibility for the assessment and evaluation of public schools, state-supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute.

B. Section 22-2-2 NMSA 1978 directs the department to set graduation expectations and hold schools accountable.

C. Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.
[6.29.13.3 NMAC - N, 10-29-2010]

6.29.13.4 DURATION: Permanent.
[6.29.13.4 NMAC - N, 10-29-2010]

6.29.13.5 EFFECTIVE DATE: October 29, 2010, unless a later date is cited at the end of a section.
This rule is filed effective October 29, 2010. School districts and charter schools will not be accountable for the requirements of this rule until July 1, 2012.
[6.29.13.5 NMAC - N, 10-29-2010]

6.29.13.6 OBJECTIVE: The New Mexico common core content standards for English language arts are mandated for students in grades K-12. The New Mexico content standards with benchmarks and performance standards for English language arts were adopted in April 1996 as part of 6 NMAC 3.2; they were revised in June 2000. The content standards, benchmarks and performance standards for grades K-4 were again revised in April 2008, and the content standards and performance indicators for Grades 9-12 were again revised in May 2009. [6.29.13.6 NMAC - N, 10-29-2010]

6.29.13.7 DEFINITIONS: "Text" means written language, oral language, digital communications (written, oral, and graphic), and other forms of multimedia communications.
[6.29.13.7 NMAC - N, 10-29-2010]

6.29.13.8 CONTENT STANDARDS FOR ENGLISH LANGUAGE ARTS, Grades K-5. All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute are bound by the English language arts common core state standards published by the national governor's association center for best practices and the council of chief state school officers. These standards are available at www.ped.state.nm.us. The English language arts common core state standards published by the national governor's association center for best practices and the council of chief state school officers are incorporated in this rule by reference.

A. The following standards are additional New Mexico standards that shall be utilized for grades K-5 in conjunction with the common core state standards incorporated by reference in 6.29.13 NMAC.

B. Reading literature. Key ideas and details.

(1) Kindergarten students will identify the main topic, retell key details of a text, and make predictions.

(2) Grade 1 students will:

(a) identify the main topic, retell key details of a text, and make predictions;

(b) identify characters and simple story lines from selected myths and stories from around the world.

(3) Grade 2 students will:

(a) identify the main topic, retell key details of a text, and make predictions;

(b) use literature and media to develop an understanding of people, cultures, and societies to explore self identity.

(4) Grade 3 students will:

(a) ask and answer questions and make predictions to demonstrate understanding of a text;

(b) develop an understanding of people, cultures, and societies and explore self identity through literature, media, and oral tradition;

(c) understand that oral tribal history is not a myth, fable, or folktale, but a historical perspective.

(5) Grade 4 students will:

(a) develop an understanding of people, cultures, and societies and explore self identity through literature, media, and oral tradition;

(b) understand that oral tribal history is not a myth, fable, or folktale, but a historical perspective.

(6) Grade 5 students will:

(a) develop an understanding of people, cultures, and societies and explore self identity through literature, media, and oral tradition;

(b) understand that oral tribal history is not a myth, fable, or folktale, but a historical perspective.

C. Reading literature: Craft and structure. Grade 1 students will recognize repetition and predict repeated phrases.

D. Reading literature: Integration of knowledge and ideas. Grade 1 students will relate prior knowledge to textual information.

E. Writing standards: Production and distribution of writing.

(1) Kindergarten students will apply digital tools to gather, evaluate, and use information.

(2) Grade 1 students will apply digital tools to gather, evaluate, and use information.

(3) Grade 2 students will:

(a) apply digital tools to gather, evaluate, and use information;

(b) use digital media and environments to communicate and work collaboratively.

F. Writing standards: text type and purposes**.** In grades 3, 4, and 5 students will use digital media environments to communicate and work collaboratively, including at a distance, to support individual learning and to contribute to the learning of others.

G. Writing standards: research to build and present knowledge.

(1) Grade 3 students will:

(a) gather relevant information from multiple sources, including oral knowledge;

(b) apply digital tools to gather, evaluate, and use information.

(2) Grade 4 students will:

(a) gather relevant information from multiple sources, including oral

knowledge;

(b) apply digital tools to gather, evaluate, and use information;

(c) demonstrate creative thinking, construct knowledge, and develop innovative products and processes using technology.

(3) Grade 5 students will:

(a) gather relevant information from multiple sources, including oral knowledge;

(b) apply digital tools to gather, evaluate, and use information;

(c) demonstrate creative thinking, construct knowledge, and develop innovative products and processes using technology.

H. Speaking and listening standards: presentation of knowledge and ideas.

(1) Kindergarten students will:

(a) demonstrate familiarity with stories and activities related to various ethnic groups and countries;

(b) with prompting and support: role play; make predictions; and follow oral and graphic instructions.

(2) Grade 1 students will:

(a) describe events related to the students' experiences, nations, and cultures;

(b) follow simple written and oral instructions.

(3) Grade 2 students will describe events related to the students' experiences, nations, and cultures.

(4) Grade 3, 4, and 5 students will:

(a) understand the influence of heritage language in English speech patterns;

(b) orally compare and contrast accounts of the same event and text;

(c) demonstrate appropriate listening skills for understanding and cooperation within a variety of cultural settings.

I. Language standards: Conventions of standard English. Students in grades K, 1, and 2 will use letter formation, lines, and spaces to create a readable document.

[6.29.13.8 NMAC - N, 10-29-2010]

6.29.13.9 CONTENT STANDARDS FOR ENGLISH LANGUAGE ARTS, Grades 6-8: All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico Military institute are bound by the English language arts common core state standards published by the national governors association center for best practices and the council of chief state school officers. The standards are available at www.ped.state.nm.us. The English language arts common core state standards published by the national governors association center for best practices and the council of chief state school officers are incorporated in this rule by reference.

A. The following standards are additional New Mexico standards that shall be utilized in conjunction with the common core state standards incorporated by reference in 6.29.13 NMAC.

B. Reading literature. Key ideas and details.

(1) Grade 6 students will:

(a) analyze how a cultural work of literature, including oral tradition, draws on themes, patterns of events, or character types, and how the differing structure of the text contributes to society, past or present;

(b) analyze works of Hispanic and Native American text by showing how it reflects the heritage, traditions, attitudes, and beliefs of the author and how it applies to society;

(c) compare a cultural value as portrayed in literature with a personal belief or value.

(2) Grade 7 students will:

(a) analyze how a cultural work of literature, including oral tradition, draws on themes, patterns of events, or character types, and how the differing structure of the text contributes to society, past or present;

(b) analyze works of Hispanic and Native American text by showing how it reflects the heritage, traditions, attitudes, and beliefs of the author and how it applies to society;

(c) use oral and written texts from various cultures to cite evidence that supports or negates understanding of a cultural value.

(3) Grade 8 students will:

(a) analyze how a cultural work of literature, including oral tradition, draws on themes, patterns of events, or character types, and how the differing structure of the text contributes to society, past or present;

(b) analyze works of Hispanic and Native American text by showing how it reflects the heritage, traditions, attitudes, and beliefs of the author and how it applies to society;

(c) use oral or written texts from various cultures, cite textual evidence that supports or negates reader inference of a cultural value.

C. Reading literature. Range of reading and level of text complexity. Grade 8 students will, by the end of the year, read and comprehend significant works of 18th, 19th, and 20th century literature including stories, dramas, and poems independently and proficiently.

D. Reading standards for informational text: integration of knowledge and ideas. Students in grades 6, 7, and 8 will:

(1) distinguish between primary and secondary sources;

(2) describe how the media use propaganda, bias, and stereotyping to influence audiences.

E. Speaking and listening standards: presentation of knowledge and ideas. Students in grades 6, 7, and 8 will:

(1) understand the influence of heritage language in English speech patterns;

(2) orally compare and contrast accounts of the same event and text;

(3) demonstrate appropriate listening skills for understanding and cooperation within a variety of cultural settings.

[6.29.13.9 NMAC - N, 10-29-2010]

6.29.13.10 CONTENT STANDARDS FOR ENGLISH LANGUAGE ARTS, Grades 9-12: All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute are bound by the English language arts common core state standards published by the national governors association center for best practices and the council of chief state school officers. These standards are available at www.ped.state.nm.us. The English language arts common core state standards published by the national governor's association center for best practices and the council of chief state school officers are incorporated in this rule by reference. The department, in consultation with relevant stakeholders, shall develop guidelines for the implementation of standards set forth in 6.29.13.10 NMAC.

A. The following standards are additional New Mexico standards that shall be utilized in conjunction with the common core state standards incorporated by reference in 6.29.13 NMAC.

B. Reading literature. Key ideas and details. Students in grades 9, 10, 11, and 12 will:

(1) analyze and evaluate common characteristics of significant works of literature from various genres, including Hispanic and Native American oral and written texts;

(2) cite strong and thorough textual evidence to support analysis of British, world, and regional literatures, including various Hispanic and Native American oral and written texts.

C. Reading standards for informational text: Integration of knowledge and ideas. Students in grades 9, 10, 11, and 12 will:

(1) analyze and evaluate common characteristics of significant works, including Hispanic and Native American oral and written texts;

(2) cite strong and thorough textual evidence to support analysis of significant works, including Hispanic and Native American oral and written texts.

[6.29.13.10 NMAC - N 10-29-2010]

HISTORY OF 6.29.13 NMAC:

Pre-NMAC HISTORY: The material in

this part is derived from that previously filed with the State Records Center:
SDE 74-17, (Certificate No. 74-17), Minimum Educational Standards for New Mexico Schools, filed April 16, 1975.
SDE 76-9, (Certificate No. 76-9), Minimum Education Standards for New Mexico Schools, filed July 7, 1976.
SDE 78-9, Minimum Education Standards for New Mexico Schools, filed August 17, 1978.
SBE 80-4, Educational Standards for New Mexico Schools, filed September 10, 1980.
SBE 81-4, Educational Standards for New Mexico Schools, filed July 27, 1981.
SBE 82-4, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed November 16, 1982.
SBE Regulation No. 83-1, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed June 24, 1983.
SBE Regulation 84-7, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed August 27, 1984.
SBE Regulation 85-4, Educational Standards for New Mexico Schools, Basic, Special Education, and Vocational Programs, filed October 21, 1985.
SBE Regulation No. 86-7, Educational Standards for New Mexico Schools, filed September 2, 1986.
SBE Regulation No. 87-8, Educational Standards for New Mexico Schools, filed February 2, 1988.
SBE Regulation No. 88-9, Educational Standards for New Mexico Schools, filed October 28, 1988.
SBE Regulation No. 89-8, Educational Standards for New Mexico Schools, filed November 22, 1989.
SBE Regulation No. 90-2, Educational Standards for New Mexico Schools, filed September 7, 1990.
SBE Regulation No. 92-1, Standards for Excellence, filed January 3, 1992.

History of Repealed Material:
6.30.2 NMAC, Standards for Excellence, filed November 2, 2000 - Repealed effective June 30, 2009.

NMAC History:
6 NMAC 3.2, Standards for Excellence, filed October 17, 1996.
6.30.2 NMAC, Standards for Excellence, filed November 2, 2000.
6.29.4 NMAC, English Language Arts; filed September 16, 2009.
6.29.14 NMAC, English Language Arts Common Core Standards; filed October 18, 2010.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 29 STANDARDS FOR EXCELLENCE
PART 14 MATHEMATICS COMMON CORE STANDARDS

6.29.14.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.29.14.1 NMAC - N, 10-29-2010]

6.29.14.2 SCOPE: All public schools, state educational institutions and educational programs conducted in state institutions other than the New Mexico military institute.
[6.29.14.2 NMAC - N, 10-29-2010]

6.29.14.3 STATUTORY AUTHORITY:
A. Section 22-2-2 NMSA 1978 grants the department the authority and responsibility for the assessment and evaluation of public schools, state-supported educational institutions and educational programs conducted in state institutions other than New Mexico military institute.
B. Section 22-2-2 NMSA 1978 directs the department to set graduation expectations and hold schools accountable.
C. Section 22-2C-3 NMSA 1978 requires the department to adopt academic content and performance standards and to measure the performance of public schools in New Mexico.
[6.29.14.3 NMAC - N, 10-29-2010]

6.29.14.4 DURATION: Permanent.
[6.29.14.4 NMAC - N, 10-29-2010]

6.29.14.5 EFFECTIVE DATE: October 29, 2010, unless a later date is cited at the end of a section.
This rule is filed effective October 29, 2010. School districts and charter schools will not be accountable for the requirements of this rule until July 1, 2012.
[6.29.14.5 NMAC - N, 10-29-2010]

6.29.14.6 OBJECTIVE: The New Mexico common core content standards for mathematics provide a framework of required knowledge and skills in this field; they are mandated for grades K-12. The content standards with benchmarks and performance standards for mathematics were adopted in 1996 as part of 6 NMAC 3.2; they were replaced in 2002. The mathematics content standards for grades 9-12 were again revised in April 2008 and in June 2009. In May 2010, the content standards for grades K-12 were revised; the benchmarks and performance standards will be developed from this foundation document.
[6.29.14.6 NMAC - N, 10-29-2010]

6.29.14.7 DEFINITIONS: [Reserved]

6.29.14.8 CONTENT STANDARDS, Grades K-12: All public schools, state supported educational institutions and educational programs conducted in state institutions other than the New Mexico military institute are bound by the mathematics common core state standards published by the national governor's association center for best practices and the council of chief state school officers. The standards are available at www.ped.state.nm.us. The mathematics common core state standards published by the national governor's association center for best practices and the council of chief state school officers are incorporated in this rule by reference. The department, in consultation with relevant stakeholders, shall develop guidelines for the implementation of standards set forth in 6.29.14.8 NMAC.
[6.29.14.8 NMAC - N, 10-29-2010]

HISTORY OF 6.29.14 NMAC:
Pre-NMAC HISTORY: The material in this part is derived from that previously filed with the State Records Center:
SDE 74-17, (Certificate No. 74-17), Minimum Educational Standards for New Mexico Schools, filed April 16, 1975.
SDE 76-9, (Certificate No. 76-9), Minimum Education Standards for New Mexico Schools, filed July 7, 1976.
SDE 78-9, Minimum Education Standards for New Mexico Schools, filed August 17, 1978.
SBE 80-4, Educational Standards for New Mexico Schools, filed September 10, 1980.
SBE 81-4, Educational Standards for New Mexico Schools, filed July 27, 1981.
SBE 82-4, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed November 16, 1982.
SBE Regulation No. 83-1, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed June 24, 1983.
SBE Regulation 84-7, Educational Standards for New Mexico Schools, Basic and Vocational Program Standards, filed August 27, 1984.
SBE Regulation 85-4, Educational Standards for New Mexico Schools, Basic, Special Education, and Vocational Programs, filed October 21, 1985.
SBE Regulation No. 86-7, Educational Standards for New Mexico Schools, filed September 2, 1986.
SBE Regulation No. 87-8, Educational

Standards for New Mexico Schools, filed February 2, 1988.
SBE Regulation No. 88-9, Educational Standards for New Mexico Schools, filed October 28, 1988.
SBE Regulation No. 89-8, Educational Standards for New Mexico Schools, filed November 22, 1989.
SBE Regulation No. 90-2, Educational Standards for New Mexico Schools, filed September 7, 1990.
SBE Regulation No. 92-1, Standards for Excellence, filed January 3, 1992.

History of Repealed Material:
6.30.2 NMAC, Standards for Excellence, filed November 2, 2000 - Repealed effective June 30, 2009.

NMAC History:
6. 3.2 NMAC, Standards for Excellence, filed October 17, 1996.
6.30.2 NMAC, Standards for Excellence, filed November 2, 2000.
6.29.7 NMAC, Mathematics, filed May 29, 2009.
6.29.14 NMAC, Mathematics Common Core Standards, filed October 18, 2010.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.29.4 NMAC, Section 4, effective October 29, 2010.

6.29.4.4 DURATION: [~~Permanent.~~] June 30, 2012.
[6.29.4.4 NMAC - N, 9-30-2009; A, 10-29-2010]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.29.7 NMAC, Section 4, effective October 29, 2010.

6.29.7.4 DURATION: [~~Permanent.~~] June 30, 2012.
[6.29.7.4 NMAC - N, 6-30-2009; A, 10-29-2010]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

14.12.2 NMAC, Manufactured Housing Requirements (filed 08/01/2000) repealed, effective 12/01/2010.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 12 MANUFACTURED HOUSING
PART 1 GENERAL PROVISIONS

14.12.1.1 ISSUING AGENCY: The Manufactured Housing Division of the Regulation and Licensing Department.
[14.12.1.1 NMAC - Rp, 14.12.2.1 NMAC, 12-01-10]

14.12.1.2 SCOPE: These rules apply to all manufacturers, dealers, brokers, salesman, installers, repairman, contractors, and purchasers of manufactured homes in the state of New Mexico.
[14.12.1.2 NMAC - Rp, 14.12.2.2 NMAC, 12-01-10]

14.12.1.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Manufactured Housing Act, Sections 60-14-1 through 60-14-20.
[14.12.1.3 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.1.4 DURATION: Permanent.
[14.12.1.4 NMAC - Rp, 14.12.2.4 NMAC, 12-01-10]

14.12.1.5 EFFECTIVE DATE: 12-01-10 unless a later date is cited at the end of a section.
[14.12.1.5 NMAC - Rp, 14.12.2.5 NMAC, 12-01-10]

14.12.1.6 OBJECTIVE: The objective of 14.12.1 NMAC is to set forth the general provisions, which apply to Part 1, Part 2 and Part 4 through Part 11 of Chapter 12, and to all persons affected or regulated by Part 1, Part 2 and Part 4 through Part 11 of Chapter 12 of Title 14.
[14.12.1.6 NMAC - Rp, 14.12.2.6 NMAC, 12-01-10]

14.12.1.7 DEFINITIONS: All words and terms defined in the Manufactured Housing Act have the same meaning in these rules.

A. Terms starting with the letter 'A' are defined as follows.

(1) "Act" means the Manufactured Housing Act. Chapter 60, Article 14, Section 4, NMSA, 1978 is incorporated herein and made a part of these rules.

(2) "Alternative permanent foundation systems" are defined as commercially packaged systems designed by a New Mexico licensed engineer for the purpose of classifying installations as permanent.

(3) "Anchoring" is defined as those systems approved by a DAPIA. Where no DAPIA approval exists a licensed professional engineer may design a anchoring system pursuant to the manufacturer's specifications.

(a) "Tie-down" is any device designed for the purpose of securing a manufactured home to the ground.

(b) "Ground anchor" is a listed screw auger.

B. Terms starting with the letter 'B' are defined as follows. [RESERVED]

C. Terms starting with the letter 'C' are defined as follows.

(1) "Commercial unit" means any structure designed and equipped for human occupancy for industrial, professional or commercial purposes.

(2) "Committee" means the manufactured housing committee.

(3) "Customer, consumer or homeowner". These words are used interchangeably throughout these rules, they are intended to be synonymous, and they mean the purchaser, homeowner or owner of a manufactured home, including an occupant of a manufactured home subsequent to installation.

D. Terms starting with the letter 'D' are defined as follows.

(1) "DAPIA" means design approval primary inspection agencies as the term is utilized in the H.U.D. regulation, which is included in the federal preemption, on manufactured homes, and inclusive of on-site installations.

(2) "Deliver" as it applies to section 20, means a seller's obligation shall be accomplished when a seller has completed or stands ready, willing and able to physically transport and locate the home to a buyer as specified in the purchase agreement or buyer's order and (a) the weather is not an impediment and (b) the parties responsible for preparing the installation site have acted in good faith and acted according to all relevant statues, codes and rules. If (a) or (b) are not met, then seller will have a reasonable time to deliver the home.

(3) "Director" means the director of the manufactured housing division.

(4) "Division" means the manufactured housing division of the regulation and licensing department.

(5) "Down payment" means any payment, such as consideration, a deposit of remuneration, of less than the full purchase price of the home.

E. Terms starting with

the letter 'E' are defined as follows. [RESERVED]

F. Terms starting with the letter 'F' are defined as follows. "Federal preemption" is defined as The National Manufactured Housing Construction and Safety Standards Act, Title VI, 42 U.S. Code as amended, including Section 604.(d) and The Manufactured Homes Procedural and Enforcement Regulations, Part 3282, including Section 32.82.11.

(1) Section 604(d) Title VI, 42 U.S. Code is incorporated herein and made a part of these rules, as follows: "no State or political subdivision of a State shall have any authority either to establish or to continue in effect, with respect any manufactured home covered, any standard regarding construction or safety applicable to the same which is not identical to the Federal manufactured home construction standard".

(2) Section 3282.11(e) is incorporated herein and made a part of these rules, as follows: "No state or locality may establish or enforce any rule or regulation or take any action that stands as an obstacle to the accomplishment and execution of the full purposes and objectives of congress. The test of whether a state rule or action is valid or must give way is whether the state rule can be enforced or the action taken without impairing the federal superintendence of the manufactured home industry as established by the act".

G. Terms starting with the letter 'G' are defined as follows.

(1) "Grade level" shall be defined as the finished grade around the exterior perimeter of the manufactured home; and, which shall slope away from the home to provide positive drainage consistent with the rules and regulations.

(2) "Ground level" shall be defined only as the average surface level exposed under the home.

H. Terms starting with the letter 'H' are defined as follows. "HUD" means the United States department of housing & urban development.

I. Terms starting with the letter 'I' are defined as follows. "Installation inspection permit" shall mean a document issued by the division that shall be used to request any inspection or re-inspection of a manufactured home permanent or non-permanent foundation system, manufactured home installation, utility connection or re-inspection request.

J. Terms starting with the letter 'J' are defined as follows. [RESERVED]

K. Terms starting with the letter 'K' are defined as follows. [RESERVED]

L. Terms starting with the letter 'L' are defined as follows.

(1) "Liquidated damages" means the sum provided in a contract that a party agrees to pay if it breaches the contract, which sum is based on the good-faith effort of the parties to estimate the actual damages likely to result from a breach of contract.

(2) "Listed materials" means equipment and materials included in a list published by a nationally recognized testing laboratory that maintain periodic inspections of production of listed equipment and materials and whose listing states either that the equipment and materials meet nationally recognized standards or have been tested and found suitable for use in a specific manner and has been approved for use in a manufacturer's installation manual or an approval in writing by the division's technical advisory council (TAC).

M. Terms starting with the letter 'M' are defined as follows.

(1) "Manufacturer II" means an enterprise whose primary business is the acquisition, restoration, renovation, or similar work and resale of distressed or damaged pre-owned manufactured housing units.

(2) "Mobile or manufactured home installation" means all on-site work necessary for the installation of a manufactured home, including:

(a) preparation and construction of the foundation system;

(b) installation of the support piers and earthquake resistant bracing system;

(c) required connection to foundation system and support piers;

(d) skirting;

(e) connections to on-site utility terminals that are necessary for the normal operation of the home; and

(f) installation of a pressure relief valve when required.

(3) "Mudslide" means the general and temporary movement down a slope of a mass of rock or soil, artificial fill, or a combination of these materials, caused or precipitated by the accumulation of water on or under the grounds.

N. Terms starting with the letter 'N' are defined as follows.

(1) "Net listing agreement" is a prohibited employment contract in which a broker, or dealer acting as a broker, receives as a commission all monies in excess of the minimum sales price agreed upon by the broker or dealer and the listing owner.

(2) "Non-permanent foundation" shall be defined as various foundational support mechanisms or arrangements other than permanent foundation systems.

O. Terms starting with the letter 'O' are defined as follows.

(1) "One hundred year flood" means the level of flooding that will be equaled or exceeded once in one hundred (100) years and has a one percent (1%) chance of occurring each year, on the average as defined by the federal emergency management agency (F.E.M.A).

(2) "On-site utility terminal" means the consumer's load side of the on-site utility meter for gas and electric utilities, or the point of attachment or connection to the utility supplier's distribution system, for water and sewer.

P. Terms starting with the letter 'P' are defined as follows.

(1) "Perimeter enclosement" is defined as any arrangement that encloses and provides weather protection to the volume beneath the principle structure. Perimeter enclosements shall not be load bearing unless engineered to be load bearing by a licensed engineer or the manufacturer. Permanent perimeter enclosements are defined as constructed or assembled components consisting of durable materials (i.e. concrete, masonry, treated wood or other approved materials) or other materials approved by the division.

(2) "Perimeter marriage band" is defined as the covering placed over the gap that exists between the exterior, at the unit's floor level and the perimeter enclosement. The materials used shall be appropriate for the weather and designed and installed in a manner consistent with good construction and engineering standards.

(3) "Permanent foundations" are defined as constructed or assembled components consisting of durable materials (i.e. concrete, masonry, treated wood or other approved materials), and are required to be constructed on-site and shall have attachments points to anchor and stabilize the manufactured home. The design of the foundation shall be DAPIA approved or designed by a licensed professional engineer in accordance with the manufacturer's specifications.

(4) "Pre-owned home" or "pre-owned manufactured home" means a manufactured home of which title has been issued to a consumer or a manufacturer's statement of origin has been issued and a unit has been subsequently declared as real property, pursuant to New Mexico property tax laws.

(5) "Prohibited sales notice" means a printed notification, issued by the division, that a manufactured home may not be offered for sale because of violations of these rules.

Q. Terms starting with the letter 'Q' are defined as follows. [RESERVED]

R. Terms starting with the letter 'R' are defined as follows.

(1) "Regulation" means the rules of the manufactured housing division.

(2) "Real estate" means land, improvements, leaseholds and other interests in real property that are less than a fee simple ownership interest, whether tangible or

intangible.

(3) "Retailer" is used interchangeably with the word "dealer" throughout these rules, these words are synonymous, and they mean "dealer" as defined pursuant to NMSA 1978, 60-14-2 (E).

(4) "Retail installment contract" means the contract as defined in NMSA 1978, 56-1-1 (H). The contract must conform to NMSA 1978, 56-1-2.

(a) Suggested examples of when a retail installment contract will be contemplated as part of the transaction: (a) chattel mortgage from a third party lender; (b) security agreement; (c) conditional sale contract; (d) contract in form of a bailment.

(b) Suggested examples of when a retail installment contract will not be contemplated as part of the transaction: (a) cash sale.

(5) "Retaining walls" are defined as a barrier with a minimum differential height of eighteen inches (18"), which retains a lateral load.

(6) "Riser" means that portion of the yardline, which protrudes through the grade level of the ground.

S. Terms starting with the letter 'S' are defined as follows. "Superintendent" means the superintendent of the regulation and licensing department.

T. Terms starting with the letter 'T' are defined as follows. [RESERVED]

U. Terms starting with the letter 'U' are defined as follows.

(1) "Unavailability of the manufacturer's installation manual" shall mean the inability to obtain such manual after undertaking a reasonable and diligent effort to obtain the same prior to the installation of a home; and includes, but is not limited to, circumstances where the customer of a used home has lost or misplaced the manual, the manufacturer is no longer in business and manuals are unavailable, or no such manual was ever printed or delivered at the time of the manufacture of a home and a photocopy of the manual could not be obtained at the manufactured housing division.

(2) "Utility" means electric, gas, water or sewer services, but does not include refuse services.

(3) "Utility supplier" means any person, park owner, municipality or public utility that supplies electricity, water, liquefied petroleum gas, natural gas or sewer service to a manufactured home.

V. Terms starting with the letter 'V' are defined as follows. [RESERVED]

W. Terms starting with the letter 'W' are defined as follows. [RESERVED]

X. Terms starting with the letter 'X' are defined as follows. [RESERVED]

Y. Terms starting with the letter 'Y' are defined as follows. "Yardline" means a buried material providing utilities from the on-site utility terminal to the manufactured home.

Z. Terms starting with the letter 'Z' are defined as follows. [RESERVED]

[14.12.1.7 NMAC - Rp, 14.12.2.7 NMAC, 12-01-10]

14.12.1.8 LOCAL ORDINANCES: Ordinances of any political subdivision of New Mexico relating to gas, including natural gas, liquefied petroleum gas or synthetic natural gas; electricity; sanitary plumbing; and installation or sale of manufactured homes shall not be inconsistent with any rules, regulations, codes or standards adopted by the division pursuant to the Manufactured Housing Act.

[14.12.1.8 NMAC - N, 12-01-10]

14.12.1.9 GENERAL ADMINISTRATION:

A. Rules are adopted by the division to further define the Manufactured Housing Act and the functions of the manufactured housing committee and the division.

B. Prior to adoption of rules, amendments to rules or repeal of rules the division or commitee shall hold a public hearing before the superintendent of the regulation and licensing department and the manufactured housing committee or a hearing officer designated by the superintendent and the committee.

C. As provided by the Manufactured Housing Act (Section 16-14-4 NMSA 1978), rules and regulations are subject to committee approval prior to division adoption.

D. If the division and the manufactured housing committee do not mutually agree to proposed rules, the superintendent may appoint a task force to develop mutually agreeable rules. At a minimum, the task force shall consist of the division director and two manufactured housing committee members. The superintendent may be a member of the task force.

E. The committee shall meet at least bimonthly at the call of the chairman and annually elect a chairman and vice chairman.

F. Meeting notice resolution, consistent with the Open Meetings Act (Section 10-15-1 et seq., NMSA, 1978), shall be adopted annually by the committee at a regularly scheduled committee meeting.

G. Adopted rules must be filed and published as provided by the State Rules Act (Section 14-4-1, et. seq., NMSA 1978) and shall be enforced thirty (30) days after filing as provided by the Uniform Licensing Act (Section 61-1-1, et seq., NMSA 1978).

[14.12.1.9 NMAC - N, 12-01-10]

14.12.1.10 MINIMUM CONSTRUCTION AND INSTALLATION STANDARDS:

A. The division adopts as part of these rules the following federal statutes and regulations as minimum standards for new manufactured home construction and installation:

(1) Manufactured Home Construction and Safety Standards Act of 1974, as amended by the National Manufactured Housing Improvement Act of 2000, 42 U.S.C. 5401-5426;

(2) Manufactured Home Construction and Safety Standards, 24 C.F.R. Section 3280;

(3) Manufactured Home Procedural and Enforcement Regulations, 24 C.F.R. Section 3282;

(4) Model Manufactured Home Installation Standards, 24 C.F.R. Section 3285; and the

(5) Manufactured Home Installation Program, 24 C.F.R. Section 3286.

B. All new manufactured homes manufactured or sold within New Mexico shall comply with the construction standards promulgated by the United States department of housing and urban development, 24 C.F.R. Section 3280 and Section 3282, under the national manufactured housing construction and safety standards act of 1974, as amended, 42 U.S.C. Section 5401- Section 5426.

C. The division adopts as part of these rules the following standards as minimum standards for used, preowned, or resold manufactured home installation:

(1) NFPA 70, national electrical code, 2008 edition, as amended, that pertains to manufactured (mobile) homes;

(2) NFPA 54, national fuel gas code, 2006 edition, as amended, that pertains to manufactured (mobile) homes;

(3) uniform plumbing code, 2006 edition, as amended, that pertains to manufactured (mobile) homes;

(4) NFPA 58, standards for the storage and handling of liquefied petroleum gases, 2008 edition, as amended, that pertains to manufactured (mobile) homes; and the

(5) uniform mechanical code, 2006 edition, as amended, that pertains to manufactured (mobile) homes.

D. Manufactured homes installed before May 19, 1988, used for nonresidential purposes are granted until May 19, 1993 to comply with the

requirements for access to the handicapped. If a nonresidential manufactured home is relocated or if major modifications are made to the unit, the unit must be brought into compliance to the state requirements for access to the handicapped.

E. Any unit used for nonresidential, or commercial purposes, manufactured or installed after May 19, 1988, must be constructed to the appropriate uniform building code standards as adopted by the construction industries division of the regulation and licensing department. The construction industries division has full jurisdiction in approval and inspection of nonresidential manufactured units. None of the provisions contained in this subsection shall apply to retailers licensed by the motor vehicle division of the taxation and revenue department.

[14.12.1.10 NMAC - N, 12-01-10]

14.12.1.11 NOTICE TO THE PUBLIC:

A. Manufactures, brokers, dealers and salespersons licensed under the Manufactured Housing Act must post a "notice to the public" poster at their place of business. The poster must be located by the main door entrance or a location within full reading view of the public.

B. The poster will include the name and address of the regulation and licensing department, manufactured housing division, and will inform the consumer how and where to file a complaint in regards to any alleged violation of the New Mexico Manufactured Housing Act and rules.

C. The manufactured housing division will furnish the posters.

[14.12.1.11 NMAC - Rp, 14.12.2.8 NMAC, 12-01-10]

14.12.1.12 STANDARD OF CONDUCT:

A. Any dealer, salesperson, or broker who receives any consideration for arranging the transfer of equity or the assumption of a loan on a manufactured home shall ascertain whether such manufactured home has a lien or security interest filed on it with the motor vehicle division of the New Mexico department of taxation and revenue. Such licensee shall insure that written consent is obtained from the holder of the lien or security interest, if any, approving the transferee's assumption of the transferor's obligation to the lien holder within ten (10) days prior to the effective date of the transfer. For purposes of this subsection, "assumption of a loan" means any substitution or attempt to substitute the responsible persons on the contract or agreement of repayment of amounts owed to a lender and includes "wraparound" agreements.

B. No licensee shall aid or abet an unlicensed person to evade the provisions of the act or these rules; knowingly combine or conspire with, or act as an agent, partner, or associate for an unlicensed person.

C. It is a violation of the Manufactured Housing Act and these rules to act outside the scope of or to misrepresent intentionally or unintentionally the scope of any license issued by the division.

D. All conditions of a sales contract signed by a dealer or broker and homeowner must be completed within ninety (90) days from the date of delivery unless otherwise signed and agreed to by both parties.

E. A copy of a purchase agreement and sales contract signed by both the licensee and purchaser are to be given to the purchaser at the time of signing or closing.

F. When a licensed dealer or licensed manufacture agrees to provide any installation in connection with the sale or lease of a mobile or manufactured home, the licensed dealer or licensed manufacture must confirm that the installer or repairman is licensed in accordance with these rules and the act. Confirmation is a copy of the current license or verification of licensure printed from the division webpage and must be retained in the customers file and be available for inspection by the division.

G. When a licensed dealer or licensed manufacture agrees to provide any foundation work in connection with the sale or lease of a mobile or manufactured home, the licensed dealer or licensed manufacture must confirm that the general building contractor (GB-2, GB-98, or GS-4) is licensed in accordance with these rules and the act. Confirmation is a copy of the current license or verification of licensure printed from the division webpage and must be retained in the customers file and be available for inspection by the division.

[14.12.1.12 NMAC - Rp, 14.12.1.11 NMAC, 12-01-10]

14.12.1.13 SUPERVISION OF LICENSEE EMPLOYEES:

A. A licensee shall adequately supervise and control employees. The failure of a licensee to undertake appropriate corrective action within a reasonable period of time after the licensee has actual knowledge of a violation of the act or these rules shall be prima facie proof of inadequate supervision and control.

B. A licensee's obligation to comply with the act and these rules shall not be altered by any contract or agreement between the licensee and his employees, agents or subcontractors.

C. Failure to adequately supervise and control employees may, after opportunity for hearing, result in a license denial, revocation or suspension.

D. A qualifying party shall provide adequate supervision and inspect all installations and endorse such inspections by personally signing an inspection permit.

[14.12.1.13 NMAC - N, 12-01-10]

14.12.1.14 CHANGE OF EMPLOYMENT, ADDRESS, NAME, OWNERSHIP OR BUSINESS ENTITY OR STRUCTURE:

A. Licenses are not transferable.

B. A licensee must notify the manufactured housing division immediately of any change in the licensee's name, business name, mailing or business address, business entity or structure, business ownership, place of business or employment.

C. Upon receipt of notice of a change of business name, the division will examine its records to determine if the proposed business name is deceptively similar to that of any other licensee and may approve the business name change if no deceptive similarities exist. The licensee shall not do business under a proposed new business name or at any new location prior to approval by the division and issuance of a new license.

[14.12.1.14 NMAC - Rp, 14.12.1.9 NMAC, 12-01-10]

14.12.1.15 ADVERTISING AND VEHICLE IDENTIFICATION:

A. The licensee's name and licensee number shall be included in advertising and on all vehicles used in conjunction with the installation and repair of manufactured homes in the licensee's business. Letters and numbers on licensee's service vehicles shall be no less than two (2) inches high.

B. This section shall not apply to manufacturers.

C. All licensees of the manufactured housing division who advertise must conform to the rules set forth by the New Mexico Unfair Trade Practices Act, Section 57-12-1 thru 57-12-22 of New Mexico Statutes and Regulation Z of the Board of Governors of the Federal Reserve System, Section 226.24 Advertising, paragraph C.

D. All licenses must include the licensees name and license number in all media advertisement.

[14.12.1.15 NMAC - Rp, 14.12.2.10 NMAC, 12-01-10]

14.12.1.16 INSPECTION OF PUBLIC RECORDS:

A. Requests for inspection of records are governed by the Inspection of Public Records Act (NMSA 1978, Section 14-2-1 et. seq.).

B. The division director

shall appoint a custodian of public records. The custodian may require that a request for inspection of records be in writing and delivered or addressed to the custodian of public records, manufactured housing division, regulation and licensing department, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504. A written request shall provide the name, address, and telephone number of the person seeking access to the records and shall identify the records requested with reasonable particularity.

C. The custodian of public records, or a substitute in the custodian's absence, shall respond to all written requests for inspection of public records as provided for in the Inspection of Public Records Act and shall provide reasonable facilities to make or furnish copies of public records to persons requesting them, during usual business hours.

D. The custodian shall charge a reasonable copy fee or the regulation and licensing department standard IPRA fee, whichever is higher, and at the custodian's discretion may require such payment to be received before copies are made.

E. Nothing in this rule prevents a member of the public from making an oral request for public records and the custodian or designee providing the requested public records.

[14.12.1.16 NMAC - Rp, 14.12.2.62 NMAC, 12-01-10]

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

A. All installations of residential manufactured homes must comply with the Manufactured Housing Act, all rules adopted by the division and all locally adopted zoning and planning requirements.

B. Prior to delivery of a manufactured home every dealer shall have the consumer sign a document acknowledging that the consumer has been advised to check with the local governing body in the locality of the site where the home will be installed to determine flood zone area installation requirements.

[14.12.1.17 NMAC - Rp, 14.12.2.59 NMAC, 12-01-10]

14.12.1.18 SEVERABILITY: If any section of these rules is held to be inoperative, invalid or illegal, the remaining provisions shall continue in effect and operation.

[14.12.1.18 NMAC - Rp, 14.12.2.44 NMAC, 12-01-10]

HISTORY of 14.12.1 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

CIC 70-5, 1969 Standards for Mobile Homes, filed 09-02-70

CIC MB 70-9, Standard for Mobile Homes for New Mexico, filed 10-23-70

CIC 71-5, 1971 Mechanical Mobile Home Code for New Mexico, filed 09-16-71

CIC 72-3, 1972 Standards for Mobile Homes, filed 08-18-72

CIC 73-1, 1973 Standards for Mobile Homes, filed 10-30-73

CIC MHB 75-4, 1975 Standard for Mobile Home Regulations pertaining to Manufacturers, Dealers, and Installers, filed 10-08-75

CIC MHB 77-7, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers, and Repairmen, filed 04-02-77

MHD 77-1, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers and Repairmen, filed 04-26-77

MHD 81-1, Mobile Housing Division Regulations, filed 05-27-81

MHD 83-1, Manufactured Housing Division Regulations, filed 08-18-83

MHD 85-1, Manufactured Housing Division Regulations, filed 02-01-85

MHD 88-1, Manufactured Housing Division Regulations, filed 08-09-88

MHD 90-1, Manufactured Housing Division Regulations, filed 12-08-89

History of Repealed Material:

14 NMAC 12.2, Manufactured Housing Requirements (filed 9-16-97) repealed 12-01-1998.

14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) repealed 6-01-1999.

14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) repealed 9-14-2000.

14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) repealed 12-01-2010.

Other History:

MHD 90-1, Manufactured Housing Division Regulations (filed 12-08-89) was renumbered, reformatted, amended and replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 12-01-1998.

14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) was replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 6-01-1999.

14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) was replaced by 14.12.2 NMAC, Manufactured Housing Requirements, effective 9-14-2000.

Those applicable portions of 14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) were replaced by 14.12.1 NMAC, General Provisions, effective 12-01-2010.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

MANUFACTURED HOUSING DIVISION

TITLE 14 HOUSING AND CONSTRUCTION

CHAPTER 12 MANUFACTURED HOUSING

PART 2 LICENSURE REQUIREMENTS

14.12.2.1 ISSUING AGENCY: The Manufactured Housing Division of the Regulation and Licensing Department.

[14.12.2.1 NMAC - Rp, 14.12.2.1 NMAC, 12-01-10]

14.12.2.2 SCOPE: These rules and regulations apply to all manufacturers, dealers, brokers, salesman, installers, repairman, contractors, and purchasers of manufactured homes in the state of New Mexico.

[14.12.2.2 NMAC - Rp, 14.12.2.2 NMAC, 12-01-10]

14.12.2.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Manufactured Housing Act, Sections 60-14-1 through 60-14-20.

[14.12.2.3 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.2.4 DURATION: Permanent.

[14.12.2.4 NMAC - Rp, 14.12.2.4 NMAC, 12-01-10]

14.12.2.5 EFFECTIVE DATE: 12-01-10 unless a later date is cited at the end of a section.

[14.12.2.5 NMAC - Rp, 14.12.2.5 NMAC, 12-01-10]

14.12.2.6 OBJECTIVE: The objective of 14.12.2 NMAC is to set forth the classifications, requirements and documentation, which must be submitted to the manufactured housing division, for licensure under the Manufactured Housing Act.

[14.12.2.6 NMAC - Rp, 14.12.2.6 NMAC, 12-01-10]

14.12.2.7 DEFINITIONS: [RESERVED]

14.12.2.8 LICENSING PROCEDURES:

A. Any person or business, prior to engaging in any scope of practice regulated by the act, shall obtain a license in accordance with the act and these

regulations. Licensees shall at all times display their license at their primary place of business within public view.

B. Application for any license required by these regulations shall be made on a form provided by the division. Each application shall be accompanied by the required nonrefundable fee as provided by 14.12.10 NMAC.

C. If an application is not complete, the applicant will be notified of all deficiencies within twenty (20) days of the division's receipt. If an incomplete application is not completed within thirty (30) days after written notification by the division, the division shall close the license application file.

D. Within twenty (20) days of the division receiving a completed application, the applicant or his designated qualifying party shall be notified that they are eligible to take the required examination. Examinations will be administered by the division at its office in Santa Fe, New Mexico or at locations designated by the division.

E. No license shall be issued until the applicant or his designated qualifying party has passed the required examination, has tendered all fees and has posted all necessary bonds required by 14.12.4 NMAC.

F. Any applicant who has not completed an application for licensure within one (1) year after notification that he has successfully passed the entry examination shall be required to reapply for licensure and retake the examination.

G. Any person applying for a license whose business is a corporation, limited liability company, limited partnership, limited liability partnership or general partnership must submit a certified copy of the articles of incorporation, articles of organization, certificate of registration, or statement of qualification at the time the application is filed with the division.

[14.12.2.8 NMAC - Rp, 14.12.2.24 NMAC, 12-01-10]

14.12.2.9 MANUFACTURERS:

A. A manufacturer's license entitles its holder to sell or import for sale manufactured homes in New Mexico.

B. Each manufacturing plant or location shall have a qualifying party and each location shall have a separate license.

C. Each manufacturing plant is required to submit a written report to the division of all new homes shipped into or within New Mexico. The report must contain the following information: New Mexico license number and name; the serial number and H.U.D. label number assigned to the home and the name of the retailer to whom the homes are delivered. The report must be filed by the fifteenth (15th) of the month following the shipment month.

[14.12.2.9 NMAC - Rp, 14.12.2.14 NMAC, 12-01-10]

14.12.2.10 DEALERS:

A. A dealer's license entitles its holder to engage in the business of selling, exchanging, buying for resale, leasing, offering to or attempting to negotiate sales or exchanges or lease-purchases of new and pre-owned manufactured homes. A dealer may also perform all functions, which a broker is authorized to perform under the act and these regulations. Any person who in any manner acts as a dealer in the transaction of more than one manufactured home in any consecutive 12-month period is required to be licensed as a dealer.

B. Each dealer's location shall have a qualifying party and each location shall have a separate license.

C. A dealer shall maintain a place of business, which is an actual physically, established location from which business can be conducted and where all documents directly related to the purchase, sale, trade and installation of a manufactured home within the preceding three years shall be available for inspection during normal business hours by a representative of the division. All locations in which a dealer offers manufactured homes off-site from the dealer's physical location are to be considered an extension of the dealer's lot. A post office box, secretarial service, telephone answering service, or similar entity does not constitute an actual physically established location.

D. The following provisions shall govern all transactions in which a dealer is involved in a transfer of a pre-owned manufactured home between a buyer and a seller, other than the dealer.

(1) The dealer's role is that of a fiduciary to his principal.

(2) In all such transactions which require a transfer of title, the dealer must: determine the status of title, including all recorded liens and security interests, of the manufactured home according to the title records of the motor vehicle division, and disclose in writing to all parties in the transaction the status of title of the home as shown by such records.

(3) All listing agreements entered into by a dealer shall disclose the percentage amount or fee to be received by the dealer upon the completion of a transaction under the terms of the listing agreement.

(4) Prior to the closing between the buyer and seller on a transaction, the dealer shall deliver to both the buyer and the seller a closing statement which shall contain, but is not limited to, the following information: the purchase price; all funds paid and to be paid by the buyer; all funds received and to be received by the seller; receipt and disposition of all other funds relevant to the transaction; the method of assumption, disposition or other treatment of existing loans on the home and liens on or security interests in the home.

E. Each dealership location must have at least one (1) licensed salesperson per location. For an individual dealer operating a single lot, the dealer's license shall meet the requirement of a salesperson license for the person to whom it is issued. A dealership operating multiple lots must have at least one (1) licensed salesperson. All persons engaged in selling manufactured homes for a dealer must be licensed with the division before engaging in the business.

F. Each dealer is required at the time of sale of a manufactured home to make a full disclosure to the buyer, concerning the disposition of the wheels, axles and hitch(es). Such disclosure must be acknowledged and signed by the purchaser.

G. If a dealership is open for business prior to receiving the appropriate license to conduct business, the division may tag each home with a "prohibit sales notice" and an inspection fee of $60.00 will be charged to the dealer for removal of each such tag.

H. Any licensed dealership may display and offer for sale manufactured homes off-site from the dealer's physical location. All locations in which a dealer offers manufactured homes off-site from the dealer's physical location are to be considered an extension of the dealer's lot.

(1) The dealer shall notify the manufactured housing division in writing, on a form supplied by the division, of each address and location where homes off-site from the dealers physical location will be displayed and offered for sale.

(2) Each home displayed off-site from the dealer's physical location and offered for sale must display a copy of the dealer's license and a copy of the MHD compliance poster.

(3) All rules and regulations of the manufactured housing division shall apply to off-site sales locations.

I. If a dealer discharges a salesperson for any activities in violation of the MHD rules and regulations the dealer must report the discharge within 30 days to the division to investigate the potential violation.

[14.12.2.10 NMAC - Rp, 14.12.2.15 NMAC, 12-01-10]

14.12.2.11 BROKERS:

A. A manufactured home broker's license entitles its holder to engage in the functions authorized for brokers in the act. A manufactured home broker's functions are strictly limited to only pre-owned manufactured homes. Any person

who in any manner engages in brokerage activities for more than one manufactured home in any consecutive 12-month period is required to be licensed as a manufactured home broker.

B. A manufactured home broker cannot negotiate any transaction involving the sale, exchange, renting or leasing of real estate unless he is licensed under the Real Estate Act of New Mexico.

C. Each manufactured home broker shall be individually licensed.

D. A manufactured home broker's role is that of a fiduciary to his principal.

E. In all transactions which require the transfer of title to a manufactured home and in which a manufactured home broker is involved the manufactured home broker must determine the status of title, including all recorded liens and security interests, of the manufactured home according to the title records of the motor vehicle division, and disclose in writing to all parties in the transaction the status of title of the home as shown by such records.

F. A manufactured home broker shall maintain a place of business, which is an actual physically, established location from which business can be conducted and where all documents directly related to the purchase, sale, trade and installation of a manufactured home within the preceding three years shall be available for inspection during normal business hours by a representative of the division. Each branch office shall also maintain copies of adequate records for this same inspection purpose of all transactions handled within the branch office.

G. A manufactured home broker shall fully disclose to the consumer any ownership interest of the manufactured home broker, either direct or indirect, in the manufactured home prior to the consumer's entering into any agreement for the purchase of the home.

H. All listing agreements entered into by a manufactured home broker shall disclose the percentage amount or fee to be received by the manufactured home broker upon the completion of a transaction under the terms of the listing agreement.

I. A manufactured home broker shall not enter into a net listing agreement.

J. Upon receipt of a written offer to purchase, a manufactured home broker shall promptly deliver the written offer to purchase to the seller. Upon obtaining written acceptance of the offer to purchase, the manufactured home broker shall promptly deliver true copies to the purchaser and seller. All terms of the transaction must be included in the written offer to purchase.

K. Before receiving a customer deposit, a manufactured home broker shall give to a purchaser an itemized statement of all approximate costs relevant to the transaction.

L. A manufactured home broker shall initiate the transfer of title on a manufactured home no later than 30 days from the completion of the transaction. A manufactured home broker shall not be responsible for title transfer if it is the responsibility of the purchaser's lienholder.

M. Prior to the closing between the buyer and seller, the manufactured home broker shall deliver to both the buyer and seller a closing statement which shall contain, but is not limited to, the following information:

(1) the purchase price;

(2) all funds paid and to be paid by the buyer;

(3) all funds received and to be received by the seller;

(4) receipt and disposition of all other funds relevant to the transaction;

(5) the method of assumption, disposition or other treatment of existing loans on the home and liens on or security interest in the home.

N. A manufactured home broker shall not operate or provide a lot or other location where manufactured homes are displayed for consumers.

O. Each manufactured home broker branch location shall have as qualifying party, a licensed and bonded associate manufactured home broker.

P. A manufactured home broker shall not purchase a manufactured home from a financial institution licensed by the New Mexico financial institutions division or consumer for the purpose of resale.

Q. A manufactured home broker will not engage in the business of buying and selling manufactured homes.

R. Every manufactured home broker will be audited annually to ensure they are not in the business of buying or selling manufactured homes.

[14.12.2.11 NMAC - Rp, 14.12.2.16 NMAC, 12-01-10]

14.12.2.12 TEMPORARY SALESPERSON LICENSE:

A. The director may issue a one time thirty (30) day temporary sales license for individuals who have never been licensed by the division as a temporary salesperson or salesperson. A temporary salesperson license shall not be renewed.

B. A temporary salesperson's license entitles its holder to be employed, either directly or indirectly, with or without remuneration or consideration by a dealer or broker to engage in sales or lease-purchases of new and pre-owned manufactured homes through that dealership or brokerage as allowed by the employer's license.

C. Custody of license.

(1) A temporary salesperson's license shall be in the custody of the licensee's employer.

(2) A temporary salesperson shall be issued a wallet card by the division. The card shall contain the licensee's name, license number and the address of the employer.

(3) If a temporary salesperson is discharged or terminates their employment, the employer shall return the temporary salesperson's license to the division within ten (10) days of the last date of employment. The division shall immediately terminate the temporary license.

D. A temporary salesperson shall not work for, be employed by or conduct transactions for more than one dealer or broker.

E. All transactions handled by or involving a temporary salesperson must be reviewed and supervised by the employing dealer or broker. All documents prepared by the temporary salesperson, in a transaction, must be reviewed by the dealer or broker.

[14.12.2.12 NMAC - Rp, 14.12.2.12 NMAC, 12-01-10]

14.12.2.13 SALESPERSONS:

A. A salesperson's license entitles its holder to be employed, either directly or indirectly, with or without remuneration or consideration by a dealer or broker to engage in sales or lease-purchases of new and pre- owned manufactured homes through that dealership or brokerage as allowed by employer's license.

B. Each salesperson shall be licensed individually.

C. Custody of license.

(1) A salesperson's license shall be in the custody of his employer.

(2) Each salesperson shall be issued a wallet card by the division. The card shall contain the licensee's name, license number and the address of the employer.

D. Change of employment.

(1) When any salesperson is discharged or transfers his place of employment, the employer shall return the salesperson's license to the division within ten (10) days of the date of termination. The division shall place the license in an inactive status.

(2) Upon employing a salesperson whose license has been returned to the division, the division, upon notification from the new employer and the request for transfer, shall transfer the salesperson's license for the remainder of any unexpired term of such license. The division shall also issue a new wallet card.

E. A salesperson or

associate broker shall not work for, be employed by or conduct transactions for more than one dealer or broker at the same time.

F. All transactions handled by or involving a salesperson must be reviewed and supervised by the employing dealer or broker. All documents prepared by the salesperson, in a transaction, must be reviewed by the dealer or broker.

G. A salesperson shall not act as a salesperson while his license is in the custody of the division.

H. A salesperson may not be licensed while there is an outstanding complaint with the manufactured housing division.

[14.12.2.13 NMAC - Rp, 14.12.2.18 NMAC, 12-01-10]

14.12.2.14 INSTALLER AND REPAIRMEN:

A. An installer's license entitles its holder to install manufactured homes for remuneration or consideration as provided for by these regulations.

B. A repairman's license entitles its holder to repair manufactured homes for remuneration or consideration as provided for by these regulations. An exception to this rule is a person(s) who makes manufacturer's warranty repairs and is employed and paid wages by a New Mexico licensed manufacturer or its designated agent. Such person(s) are not required to maintain a repairman's license.

C. Licenses for installers and repairmen shall be classified as MHD-1, MHD-2, MHD-3, MHD-3 Y and MHD-3 E.

(1) MHD-1 shall permit the holder to level ground and place piers to support a manufactured home, to attach and tighten tiedowns, to connect existing water and sewer lines, to connect electrical cable to the home's approved existing receptacle, to install and repair skirting, and to install concrete associated with footings or foundations.

(2) MHD-2 shall permit the holder to perform all functions of an MHD-1 and to make structural repairs and alterations.

(3) MHD-3 shall permit the holder to perform all the functions of an MHD-2 and to service and repair natural gas piping and appliances, change and adjust orifices in a manufactured home prior to connection to L.P. gas, and to service and repair plumbing and electrical systems.

(4) The scope of an MHD-3 Y licensee shall be extended to install gas yardlines to manufactured homes upon acquiring an appropriate endorsement from the division.

(5) The scope of an MHD-3 E licensee shall be extended to install feeder assemblies from the on-site utility terminal to the manufactured home not to exceed 30 feet. The provisions for obtaining a separate electrical endorsement shall include a minimum of two years in the last 10 years of verifiable experience performing electrical work on manufactured homes or related equipment.

D. Structural repairs, alterations and modifications allowed by classifications MHD-2 and MHD-3 are limited to the manufactured home itself and include awnings and porches supported by the home. Any structural repair, alteration or modification outside the manufactured home, including any concrete construction other than small pads for support posts, is not included under the MHD-2 or MHD-3 classifications. Licensees must comply with provisions of the Construction Industries Licensing Act. Sections 60-13-1, et. seq., NMSA 1978, to build any structure which requires a license under that act.

E. An applicant shall provide evidence of meeting at least one of the following minimum experience requirements:

(1) 1,800 hours of experience installing manufactured homes;

(2) 3,600 hours of experience in the construction of manufactured homes;

(3) 3,600 hours of experience as a building construction supervisor;

(4) 1,800 hours as an active manufactured home installation inspector;

(5) completion of one year of a college program in construction-related field; or

(6) any combination of experience or education from 1 - 5 above that totals 3,600 hours.

F. An applicant for installation license must complete 12 hours of training, at least 4 of which must consist of training on the federal installation standards and installation program. The training must be conducted by committee approved trainers who meet the requirements of 24 C.F.R. Section 3286 subpart D. The curriculum must include, at a minimum, training in the following areas:

(1) an overview of the Manufactured Home Construction and Safety Standards Act and the general regulatory structure of the HUD manufactured housing program;

(2) an overview of the manufactured home installation standards and regulations established in parts 24 C.F.R. Section 3285 and 24 C.F.R. Section 3286, and specific instruction including:

(a) preinstallation considerations;

(b) site preparation;

(c) foundations;

(d) anchorage against wind;

(e) optional features, including comfort cooling systems;

(f) ductwork and plumbing and fuel supply systems;

(g) electrical systems; and

(h) exterior and interior close-up work;

(3) an overview of the construction and safety standards and regulations found in parts 24 C.F.R. Section 3280 and 24 C.F.R. Section 3282;

(4)licensing requirements applicable to installers;

(5) installer responsibilities for correction of improper installation, including installer obligations under applicable state and HUD manufactured housing dispute resolution programs;

(6) inspection requirements and procedures;

(7) problem-reporting mechanisms;

(8) operational checks and adjustments; and

(9) penalties for any person's failure to comply with the federal or state requirements;

(10) qualified trainers must revise and modify course curriculum as needed to include, at a minimum, any relevant modifications to the federal or state act or the standards, rules and regulations, as well as to provide any training further mandated by the division and HUD.

G. An applicant for licensure must provide evidence of receiving a passing grade of 70 percent on a HUD administered or HUD approved examination.

H. An installer or repairman shall maintain a place of business, which is an actual physically, established location from which business can be conducted and where accounts and records shall be available for inspection during normal working hours by a representative of the division. A post office box, secretarial service, telephone answering service or similar entity does not constitute an actual physically established location for purposes of this subsection.

I. The division may, upon request, grant separate licensure for any person holding a valid license in the electrical or mechanical classifications issued under the Construction Industries Licensing Act (Sections 60-13-1, et. seq., NMSA 1978), as amended, and may permit such person to act in the capacity of an installer or repairman for electrical or mechanical work on a manufactured home within the scope of such license. The division may also, upon request, grant separate licensure for any person holding a valid license in the general construction classifications, including GB-2, GB-98, or GS-4 classifications issued under the Construction Industries Licensing Act (Sections 60-13-1, et. Seq., NMSA 1978), as amended, and may permit such person to act in the limited capacity of a contractor for excavation and preparation of dirt and concrete work associated with footings, anchors, foundations and stem walls. Any

person requesting a license, in accordance with this provision, shall furnish proof satisfactory to the division of his status as a licensee of the construction industries division or its successor. Nothing in this provision shall be construed as a waiver of any obligation to comply with any other requirement of the Manufactured Housing Act or these regulations, including the bonding requirements of these regulations.
[14.12.2.14 NMAC - N, 12-01-10]

HISTORY of 14.12.2 NMAC:
Pre-NMAC History:
Material in the part was derived from that previously filed with the commission of public records - state records center and archives:
CIC 70-5, 1969 Standards for Mobile Homes, filed 09-02-70
CIC MB 70-9, Standard for Mobile Homes for New Mexico, filed 10-23-70
CIC 71-5, 1971 Mechanical Mobile Home Code for New Mexico, filed 09-16-71
CIC 72-3, 1972 Standards for Mobile Homes, filed 08-18-72
CIC 73-1, 1973 Standards for Mobile Homes, filed 10-30-73
CIC MHB 75-4, 1975 Standard for Mobile Home Regulations pertaining to Manufacturers, Dealers, and Installers, filed 10-08-75
CIC MHB 77-7, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers, and Repairmen, filed 04-02-77
MHD 77-1, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers and Repairmen, filed 04-26-77
MHD 81-1, Mobile Housing Division Regulations, filed 05-27-81
MHD 83-1, Manufactured Housing Division Regulations, filed 08-18-83
MHD 85-1, Manufactured Housing Division Regulations, filed 02-01-85
MHD 88-1, Manufactured Housing Division Regulations, filed 08-09-88
MHD 90-1, Manufactured Housing Division Regulations, filed 12-08-89

History of Repealed Material:
14 NMAC 12.2, Manufactured Housing Requirements (filed 9-16-97) repealed 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) repealed 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) repealed 9-14-2000.
14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) repealed 12-01-2010.

Other History:
MHD 90-1, Manufactured Housing Division Regulations (filed 12-08-89) was renumbered, reformatted, amended and replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) was replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) was replaced by 14.12.2 NMAC, Manufactured Housing Requirements, effective 9-14-2000.
Those applicable portions of 14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) were replaced by 14.12.2 NMAC, Licensure Requirements, effective 12-01-2010.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 12 MANUFACTURED HOUSING
PART 4 BONDS AND TRUST ACCOUNTS

14.12.4.1 ISSUING AGENCY: The Manufactured Housing Division of the Regulation and Licensing Department.
[14.12.4.1 NMAC - Rp, 14.12.2.1 NMAC, 12-01-10]

14.12.4.2 SCOPE: These rules and regulations apply to all dealers, brokers, salesperson, manufacturers, repairman, and installers of manufactured homes in the state of New Mexico.
[14.12.4.2 NMAC - Rp, 14.12.2.2 NMAC, 12-01-10]

14.12.4.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Manufactured Housing Act, Sections 60-14-1 through 60-14-20.
[14.12.4.3 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.4.4 DURATION: Permanent.
[14.12.4.4 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.4.5 EFFECTIVE DATE: 12-01-10 unless a later date is cited at the end of a section.
[14.12.4.5 NMAC - Rp, 14.12.2.5 NMAC, 12-01-10]

14.12.4.6 OBJECTIVE: The objective of 14.12.4 NMAC is to set forth the requirements for trust accounts, deposits for a manufactured home transaction, and consumer protection bonds
[14.12.4.6 NMAC - Rp, 14.12.2.6 NMAC, 12-01-10]

14.12.4.7 DEFINITIONS: [RESERVED]
[Refer to 14.12.1.7 NMAC]

14.12.4.8 TRUST ACCOUNTS:

A. This section shall apply only to transactions involving pre-owned manufactured homes in which the dealer or broker has no ownership interest.

B. Every dealer and broker shall maintain a trust account in a banking institution authorized to conduct business in this state.

C. All money, funds or negotiable instruments received by the dealer or broker in a pre-owned manufactured home transaction shall as soon as is practicable be deposited in the trust account and such money, funds or negotiable instruments shall remain in the trust account until the transaction is completed or otherwise terminated. Upon the completion or termination of the transaction, the dealer or broker shall account for all money, funds and negotiable instruments in accordance with these rules and shall disburse each money, funds and negotiable instruments to the parties to the transaction accordingly.

D. Every dealer and broker shall keep records of all money, funds and negotiable instruments received and deposited in the trust account, which records shall include, but are not limited to, the following information:

(1) the type and amount of money, funds or negotiable instruments received and deposited and from whom they were received;

(2) the date money, funds or negotiable instruments are received;

(3) the date of deposit;

(4) the date, amount and purpose of withdrawals;

(5) the name of the person or persons for whose account the money, funds or negotiable instruments were deposited;

(6) to whom the money, funds or negotiable instruments belong.

E. All records, accounts and funds shall be subject to inspection by the division at the dealer's or broker's place of business and at the banking institution.

F. A dealer or broker shall not deposit any money, funds or negotiable instruments in the trust account other than those required by this section. Provided however, a dealer or broker may deposit a sum of money other than trust money in the trust account in order to meet the minimum balance required by the banking institution to maintain the account and avoid service charges.

[14.12.4.8 NMAC - Rp, 14.12.2.19 NMAC, 12-01-10]

14.12.4.9 DEPOSITS:

A. Consumer deposits for a manufactured home transaction will not be collected without a bona fide purchase agreement or buyer's order signed by both buyer and seller which shall include but is not limited to: year, model, manufacturer, serial number if unit is in stock, purchase price, required deposit and financing terms of the purchase.

B. Deposits will be refunded in full if financing is denied or terms of approval are significantly different from original agreement. If the buyer fails to complete his obligation for the purchase, deposits will be refunded as follows.

(1) Deposits on units in stock will be refunded in full less all actual costs incurred by the seller, such costs to be a maximum of 5% of the purchase price.

(2) Deposits units ordered for a specific purchaser will be refunded in full, less all actual costs incurred by the seller, such costs to be a maximum of 10% of the purchase price. Seller must fully disclose that the unit will be ordered.

(3) Deposits on homes requiring repairs, upgrades, modifications or changes agreed to by both buyer and seller in writing will be refunded in full less actual costs of repairs, upgrades, modifications, or changes.

C. The timetable for refund of deposits is.

(1) Cash deposits should be refunded within one (1) business day, but in no case, later than five (5) business days after the request for refund.

(2) Check deposits should be refunded within one (1) business day after clearing the maker's bank, but in no case, later than five (5) business days, after the refund request.

(3) Deposits other than cash or check will be refunded no later than two (2) days after the refund request.

[14.12.4.9 NMAC - Rp, 14.12.2.20 NMAC, 12-01-10]

14.12.4.10 BONDS:

A. Consumer protection bonds or other security as approved by the division shall not be released by the division until all claims and complaints against the licensee have finally resolved or until two (2) years after the licensee ceased doing business in New Mexico, whichever period is later. In no case shall the division authorize the release of bonds except in accordance with 14.12.4.10 NMAC.

B. All liability on a consumer protection bond or other form of security allowed by the division shall be applicable to the bond or other security in effect as of the date of sale or service of the occurrence which gave rise to the liability. In the event that the total amount of claims against a consumer protection bond exceeds the aggregate total amount of any bond or other form of approved security, the division may distribute the proceeds of such bond or other approved security pro rata to the claimants.

C. The committee may order the division to attach and disburse a licensee's consumer protection bond subsequent to a hearing before the committee without taking action against the licensee's license. The division may attach any licensee's consumer protection bond and indemnify a consumer for losses to the limit of the bond for damages resulting from such licensee's violation of the act or regulations or from fraud, misrepresentation, making of false promises or the refusal, failure of inability to transfer good and sufficient legal titles, as these causes are set forth and authorized in Section 60-14-6, N.M.S.A. 1978. The division, upon a finding of a violation by a licensee, may require the licensee to increase the amount of any bond. Any increase shall be in proportion to the seriousness of the offense or to the repeat nature of the licensee's violation, but shall not exceed one hundred thousand dollars ($100,000.00) for manufacturers, fifty thousand dollars ($50,000.00) for dealers, and brokers, twenty-five thousand dollars ($25,000.00) for installers and repairman to include individuals granted licensure in accordance with 14.12.2.14 NMAC. The division may reduce any increased bond when satisfied that violations have been cured by appropriate corrective action and that the licensee is otherwise in good standing.

D. If reimbursement to a consumer for repairs, parts or other work is requested in a complaint the committee shall determine the reasonable value of such repairs, parts or work.

E. If a licensee does not conduct any business after issuance of his license and the posting of the applicable bond, the division, upon receipt of the satisfactory evidence that no business was conducted, and upon surrender of the license, may release the licensee's bond.

F. A corporate surety which issues a surety bond for a license may cancel the surety bond by giving sixty (60) days prior written notice to the division of such cancellation, provided, however, that no such cancellation shall be effective unless the division has approved the cancellation by appropriate signature on the notice.

G. The division shall give written notice to any corporate surety of any formal notice of contemplated disciplinary action served upon a licensee that is insured by that corporate surety.

H. Payments from a consumer protection surety bond may only be used to reimburse a consumer for actual damages incurred as a result of actions caused by a licensee. Actual damages may include, but are not limited to, repairs, parts or other work requested in a complaint, after the committee determines the reasonable value of such repairs, parts or work, and for reimbursement of deposits or down payments. The proceeds of a bond may not be used to pay punitive damages, attorney fees or costs associated with, or attributable, to pain and suffering.

[14.12.4.10 NMAC - Rp, 14.12.2.28 NMAC, 12-01-10]

14.12.4.11 MANUFACTURER'S CONSUMER PROTECTION BOND:

A. Each manufacturer or manufacturer II re-furbisher shall maintain consumer protection bonds with the division equal to the number of locations or plants shipping units into New Mexico or constructing units in New Mexico. Each bond may be satisfied by a surety bond or other security in the form and in the amount prescribed by the division with a minimum amount for each location, fifty thousand dollars ($50,000.00) for a Manufacturer I and ten thousand dollars ($10,000.00) for a Manufacturer II-Re-furbisher. Each surety in the form of a cash consumer protection bond shall be posted with a financial institution located in New Mexico. Out-of-state manufacturers shall submit an affidavit consenting to service of process in New Mexico in connection with all claims filed pursuant to the provisions of the act.

B. Each bond shall be indemnity for any loss sustained by any consumer as a result of:

(1) a violation by the manufacturer of any provision of the act or of these regulations;

(2) a violation of the manufacturer's written warranty;

(3) fraud by the manufacturer in the execution or performance of a contract;

(4) the misrepresentation or the making of false promises by the manufacturer, or through the advertising, the agents, or the salespersons of the manufacturer;

(5) refusal, failure or inability of the manufacturer to transfer good and sufficient legal title to the consumer.

[14.12.4.11 NMAC - Rp, 14.12.2.29 NMAC, 12-01-10]

14.12.4.12 DEALER'S CONSUMER PROTECTION BOND:

A. Each dealer shall maintain consumer protection bonds with the division equal to the number of locations at which the dealer does business. Each bond may be satisfied by a surety bond or other security in the form and in the amount

prescribed by the division, with a minimum amount of fifty thousand dollars ($50,000.00) for each location. Each surety in the form of cash consumer protection bond shall be posted with a financial institution located in New Mexico. Out of state dealers shall submit an affidavit consenting to service of process in New Mexico in connection with all claims filed pursuant to the provisions of the act.

B. Each bond shall be indemnity for any loss sustained by the consumer as a result of:

(1) a violation by the dealer of any provision of the act or of these regulations;

(2) fraud by the dealer in the execution or performance of a contract;

(3) the misrepresentation or making a false promise by the dealer, or through the advertising, the agents, or the salespersons of the dealer;

(4) a violation of the dealer's written warranty;

(5) refusal, failure or inability of the dealer to transfer good and sufficient legal title to the consumer.

[14.12.4.12 NMAC - Rp, 14.12.2.30 NMAC, 12-01-10]

14.12.4.13 INSTALLER'S OR REPAIRMAN'S CONSUMER PROTECTION BOND:

A. Each installer and each repairman to include individuals granted licensures in accordance with 14.12.2.14 NMAC shall maintain consumer protection bonds with the division. Each bond may be satisfied by a surety bond or other security in the form and in the amount prescribed by the division. The minimum bond amount shall be in an amount not less than ten thousand dollars ($10,000). Bonds shall be presented to the division upon application for licensure and subsequently at each license renewal period. Each surety in the form of a cash consumer protection bond must be posted with a financial institution located in New Mexico. Out of state installers or repairmen to include individuals granted licensures in accordance with 14.12.2.14 NMAC shall submit an affidavit consenting to service of process in New Mexico in connection with all claims filed pursuant to the provisions of the act.

B. Each bond shall be indemnity for any loss sustained by any consumer as a result of:

(1) fraud by the installer or repairman to include individuals granted licensures in accordance with 14.12.2.14 NMAC in the execution or performance of a contract;

(2) the misrepresentation or the making of a false promise by the installer or repairman to include individuals granted licensures in accordance with 14.12.2.14 NMAC, or through the advertising, or the agents of the installer or the repairman to include individuals granted licensures in accordance with 14.12.2.14 NMAC;

(3) a violation of the installer's or repairman's written warranty to include individuals granted licensures in accordance with 14.12.2.14 NMAC.

[14.12.4.13 NMAC - Rp, 14.12.2.31 NMAC, 12-01-10]

14.12.4.14 BROKER'S CONSUMER PROTECTION BOND:

A. Each broker shall maintain a consumer protection bond with the division. Each bond may be satisfied by a surety bond or other security in the form and in the amount prescribed by the division, with a minimum amount of fifty thousand dollars ($50,000.00). Each branch office shall have an associate broker with a proper license and fifty thousand dollars ($50,000.00) consumer protection bond. Each surety in the form of a cash consumer protection bond must be posted with a financial institution located in New Mexico. Out of state brokers shall submit an affidavit consenting to service of process in New Mexico in connection with all claims filed pursuant to the provisions of the act.

B. Each bond shall be indemnity for any loss sustained by a consumer as a result of:

(1) a violation by the broker of any provision of the act or these regulations;

(2) fraud by the broker in the execution or performance of a contract;

(3) the misrepresentation or the making of a false promise by the broker or through the advertising, or the agents of the broker.

[14.12.4.14 NMAC - Rp, 14.12.2.32 NMAC, 12-01-10]

14.12.4.15 CONSUMER PROTECTION BOND PROCEDURES:

A. A person claiming to be injured by an alleged violation of the act or these regulations or by reason of any other cause set forth in the Manufactured Housing Act, NMSA 1978, Section 60-14-6, may file with the division a written complaint which states the name and address of the bondholder whose bond has been claimed against and includes a concise statement of the cause of the alleged injury. If it is determined by the division that the complaint is insufficient or defective, the complainant shall be promptly notified and may be permitted to amend the complaint, in the sole discretion of the division.

B. Upon receipt of a written complaint, the division shall investigate, by telephone or by in person contact, within thirty (30) days of receipt of the complaint to determine whether cause exists to investigate further. If such cause exists, an on-site inspection may be made within thirty (30) days of such determination. The on-site inspection is not mandatory. The complainant should be available to the investigator during reasonable business hours during the investigation period.

C. The division shall give written notice to the bondholder within ten (10) days of receipt of the complaint. The notice shall request correction of the violations within forty (40) days of the division's receipt of the complaint. The letter may also request investigation according to Subpart I of the Federal Manufactured Home Construction and Safety Standards, Federal Procedural and Enforcement Regulations, which require investigation of class or re-occurrences of non-conformance to the Federal Standards.

D. Any notice or decision required pursuant to this regulation may be served either personally or by regular, or certified mail, return receipt requested, directed to the bondholder's last known address as shown by the records of the division. If the notice or decision is served personally, service shall be made in the same manner as is provided in the Rules of Civil Procedure for the New Mexico district courts. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date shown on the return receipt showing delivery, or on the date of the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision.

E. If the committee determines that there is no cause for the complaint, the complaint shall be dismissed. The division shall retain all information on which the decision was based in its consumer complaint files for five (5) years after closing the case. This information should include (a) the determination; (b) who made the determination; and (c) how the determination was made.

F. If committee determines that there is cause for the complaint, the division should attempt to achieve a satisfactory resolution of the complaint through correspondence or informal conference.

G. If the committee determines that the items requested to be corrected by the complainant are the responsibility of the manufacturer, and that these items are required to be corrected under the Federal Regulations, the manufacturer will be requested to submit, in writing, a notification or correction plan to the director of the division within twenty (20) days of receipt of the request and as required under Subpart I of the federal regulations. The plan should include, but not be limited to, a list of manufactured homes affected, method of correction, content of notification notice to consumer and the requirements as detailed

under Subpart I of the federal regulations. If a plan is submitted to the division, the division should approve or modify the plan and send it back to the manufacturer for remedial action in the case. If, within twenty (20) days, there does not seem to be a reoccurrence of the same deficiencies, no formal plan needs to be submitted if the division has granted waiver to the plan. The manufacturer shall have sixty (60) days to notify and correct, and an additional thirty (30) days to submit closeout reports of all action taken by the manufacturer.

H. The division may charge a re-inspection fee of sixty-five dollars ($65.00) each time a re- inspection is performed in connection with a consumer complaint. On those consumer complaints, which the division investigates but are not prosecuted by the division, no fee will be charged. The fee, if assessed, shall be charged to the dealer, manufacturer, installer/ repairman, or broker as appropriate.

I. If the complaint is not substantially resolved by the foregoing method, the division may send the complaint to the committee for bond attachment proceedings consistent with the procedure set forth herein.

J. If the matter is referred to the committee for bond revocation proceedings, the division shall serve upon the bondholder a written notice containing a statement (1) that the committee has sufficient evidence which, if not rebutted or explained, will justify the committee taking the contemplated action; (2) indicating the general nature of the evidence against the bondholder; (3) the statutes and regulations authorizing the committee to take the contemplated action; (4) that the bondholder may request a hearing on the matter within twenty (20) days after service of the notice; and (5) the rights of a person entitled to hearing as provided under the Uniform Licensing Act, Section 61-1-8 NMSA 1978.

K. If the bondholder does not mail a request for a hearing within the time and in the manner required by this section, the committee may take the action contemplated in the notice, and such action shall be final.

L. If the bondholder timely requests a hearing, the division shall notify the bondholder of the time and place of hearing, the name of the hearing officer, if any, and the statutes and regulations authorizing the committee to take the contemplated action. The notice shall set the hearing within a reasonable time after the division's receipt of the request for hearing, but in no event later than sixty (60) days thereafter.

M. The committee shall conduct the hearing, or may appoint a hearing officer to do so.

N. A bondholder may be represented by counsel, may be represented by a licensed member of his or her profession or occupation, or both; and may present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues;

O. Upon written request to another party, any party may ask to: (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing. The division and the committee have no power to force the parties to comply with such requests.

P. The party to whom such a request is made should comply with it within ten (10) days after the mailing or delivery of the request. No such request should be made less than fifteen (15) days before the hearing.

Q. The committee has the discretion to grant continuances, to take testimony or to examine witnesses. The committee may also hold conferences before or during the hearing for the settlement or simplification of the issues.

R. The division shall present the case against the bondholder.

S. The committee may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The committee may in its discretion exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

T. The committee may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within their specialized knowledge. When the committee takes notice of a fact, the bondholder should be notified either before or during the hearing of the fact so noticed and its source and shall be afforded an opportunity to contest the fact so noticed.

U. The committee members may use their experience, technical competence and specialized knowledge in the evaluation of evidence presented to them.

V. The record may be preserved by audio or video recording or both.

W. Whether conducted by the committee or by a hearing officer, after a hearing has been completed, all members who were not present throughout the hearing should familiarize themselves with the record, including the hearing officer's report, before participating in the decision.

X. A decision based on the hearing shall be made by a quorum of the committee and signed by the person designated by the committee within ninety (90) days after the hearing.

Y. Within fifteen days (15) after the decision is rendered and signed, the division shall serve upon the bondholder a copy of the written decision.

Z. If a person who has requested a hearing does not appear, and no continuance has been granted, the committee may hear the evidence of such witnesses as may have appeared, and the committee may proceed to consider the matter and dispose of it on the basis of the evidence before it. Where because of accident, sickness or other cause a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time apply to the committee to reopen the proceeding, and the committee upon finding sufficient cause shall immediately fix a time and place for a hearing and give the person notice as required above. At the time and place fixed, a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing.

AA. These procedures do not grant a statutory right of review.

[14.12.4.15 NMAC - Rp, 14.12.2.63 NMAC, 12-01-10]

HISTORY of 14.12.4 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

CIC 70-5, 1969 Standards for Mobile Homes, filed 09-02-70

CIC MB 70-9, Standard for Mobile Homes for New Mexico, filed 10-23-70

CIC 71-5, 1971 Mechanical Mobile Home Code for New Mexico, filed 09-16-71

CIC 72-3, 1972 Standards for Mobile Homes, filed 08-18-72

CIC 73-1, 1973 Standards for Mobile Homes, filed 10-30-73

CIC MHB 75-4, 1975 Standard for Mobile Home Regulations pertaining to Manufacturers, Dealers, and Installers, filed 10-08-75

CIC MHB 77-7, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers, and Repairmen, filed 04-02-77

MHD 77-1, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers and Repairmen, filed 04-26-77

MHD 81-1, Mobile Housing Division Regulations, filed 05-27-81

MHD 83-1, Manufactured Housing Division Regulations, filed 08-18-83

MHD 85-1, Manufactured Housing Division Regulations, filed 02-01-85

MHD 88-1, Manufactured Housing Division Regulations, filed 08-09-88

MHD 90-1, Manufactured Housing Division

Regulations, filed 12-08-89

History of Repealed Material:
14 NMAC 12.2, Manufactured Housing Requirements (filed 9-16-97) repealed 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) repealed 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) repealed 9-14-2000.
14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) repealed 12-01-2010.

Other History:
MHD 90-1, Manufactured Housing Division Regulations (filed 12-08-89) was renumbered, reformatted, amended and replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) was replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) was replaced by 14.12.2 NMAC, Manufactured Housing Requirements, effective 9-14-2000.
Those applicable portions of 14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) were replaced by 14.12.4 NMAC, Bonds and Trust Accounts, effective 12-01-2010.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 12 MANUFACTURED HOUSING
PART 5 INSTALLATION REQUIREMENTS

14.12.5.1 ISSUING AGENCY: The Manufactured Housing Division of the Regulation and Licensing Department.
[14.12.5.1 NMAC - Rp, 14.12.2.1 NMAC, 12-01-10]

14.12.5.2 SCOPE: These rules and regulations apply to all manufacturers, dealers, brokers, salesman, installers, repairman, contractors, and purchasers of manufactured homes in the state of New Mexico.
[14.12.5.2 NMAC - Rp, 14.12.2.2 NMAC, 12-01-10]

14.12.5.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Manufactured Housing Act, Sections 60-14-1 through 60-14-20 NMSA 1978.
[14.12.5.3 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.5.4 DURATION: Permanent.
[14.12.5.4 NMAC - Rp, 14.12.2.4 NMAC, 12-01-10]

14.12.5.5 EFFECTIVE DATE: 12-01-10 unless a later date is cited at the end of a section.
[14.12.5.5 NMAC - Rp, 14.12.2.5 NMAC, 12-01-10]

14.12.5.6 OBJECTIVE: The objective of 14.12.5 NMAC is to set forth the permitting, installation, testing and inspection requirements for the installation of new and pre-owned manufactured homes.
[14.12.5.6 NMAC - Rp, 14.12.2.6 NMAC, 12-01-10]

14.12.5.7 DEFINITIONS: [RESERVED]
[Refer to 14.12.1.7 NMAC]

14.12.5.8 GENERAL INSTALLATION REQUIREMENTS (New or used; pre-owned or resold): The following requirements apply to new, used, pre-owned or resold manufactured homes, unless otherwise indicated.

A. Manufactured homes produced under the Federal Manufactured Home Construction and Safety Standards Act must be installed, including completion of all factory installed connections from the unit to the necessary utilities, by persons licensed as a manufactured home installer or repairman under the provisions of 14.12.2 NMAC.

B. No person shall install a new or pre-owned manufactured home without first obtaining a permit for installation from the manufactured housing division.

C. A homeowner may secure a permit, when the homeowner assumes responsibility and does the work on their home on a single site.

D. No utility supplier shall have a connection from a supply of electricity, water, liquefied petroleum gas, natural gas or sewer without first obtaining a permit for installation from the division.

E. No utilities shall be connected until the home is properly installed upon a permanent foundation, or a non-permanent foundation.

F. Utility connections for electricity, water, natural gas or sewer from on-site utility terminals to a new, used, or pre-owned or resold manufactured home produced under the Federal Manufactured Home Construction and Safety Standards Act shall be made according to the manufacture's installation instructions.

G. If the manufacture's installation instructions are not available for installation of a used, or pre-owned or resold manufactured home, the installation shall be made according to the regulations herein.
[14.12.5.8 NMAC - N, 12-01-10]

14.12.5.9 SITE WORK (New or used; pre-owned or resold): The following requirements apply to new, used, or pre-owned or resold manufactured homes, unless otherwise indicated.

A. The licensee and permit holder or home owner holding a permit who is performing the work to install a new, used, pre-owned or resold manufactured home shall review the intended installation site and determine that the site is suitable for the home and that the installation will comply will all state and local requirements prior to the installation. All manufactured home sites designed for either a non-permanent foundation or a permanent foundation must comply with the following minimum standards:

(1) sites shall have acceptable soils to withstand the stresses and load bearing elements of the manufactured home to be placed upon the site;

(2) new units shall comply with the soils criteria delineated by the manufacturer in the manufacturer's installation manual.

B. Sites shall be prepared in such a manner as to comply with all locally adopted zoning, planning and floodplain requirements. This standard applies to new and used, pre-owned or resold homes.

C. Permanent foundation sites shall be prepared in such a manner that positive drainage of surface water is maintained and directed away from the manufactured home and adjacent improvements. The perimeter completely around the manufactured home shall be sloped to provide positive drainage away from the home and prevent moisture accumulation under the home, unless the manufacturer's installation instructions or the local requirements for slope and drainage applies. Slope shall be one percent to the property line or for 20 feet.

D. Every manufactured home prior to installation shall have a site plan review approved by the local, county, municipal authority or state authority, if any; and, when required, shall illustrate the placement of the home on the site, the location of property lines, the zoning classification of the site, the location, type and specifications of the septic system, water utility, electrical utility and service, and the gas utility source and size, if utilized.
[14.12.5.9 NMAC - Rp, 14.12.2.60 NMAC,

12-01-10]

14.12.5.10 NON-PERMANENT FOUNDATIONS (New or used; pre-owned or resold): The following requirements apply to new, used, pre-owned or resold manufactured homes, unless otherwise indicated.

A. Ordinances of any political subdivision of New Mexico relating to installation of manufactured homes shall not be inconsistent with any rules, regulations, codes or standards adopted by the division pursuant to the Manufactured Housing Act, including the foundation systems.

B. Perimeter enclosements.

(1) All materials to be used for a perimeter enclosement must have prior approval by the division.

(2) Material shall be installed in accordance with the material manufacturer's recommended installation instructions or in accordance with the minimum standards adopted by the division.

(3) The manufactured home's perimeter enclosement must be self-venting, and no flammable objects may be stored under the manufactured home.

(4) An access or inspection panel shall be installed in the perimeter enclosement and shall be located so that utilities and blocking may be inspected.

(5) All vents and openings shall be installed to prevent entry of rodents and direct rainfall not to exceed ¼ inch mesh.

(6) All perimeter enclosements in excess of thirty inches (30") in height must be supported vertically at least every four (4) feet or installed according to the enclosement material manufacturer's specifications.

C. Anchoring. When the manufacturer has issued required instructions for anchoring, the manufacturer's instructions shall be followed.

D. **New homes.** The manufacturer's installation manual shall be followed for all new homes installed within the state of New Mexico. The person(s) performing the work to install a new home shall be responsible to insure that all necessary installation permits have been obtained by the homeowner, customer or installer, to be determined in writing prior to the delivery of subject home.

E. Used, pre-owned and resales. The person(s) performing the work to install a used, preowned or resold manufactured home shall be responsible for: a) all installation permits; b) calling for inspections; and c) compliance with all locally adopted zoning, planning and floodplain ordinances and d) compliance with all minimum soil compaction criteria, slope and drainage requirements. The person(s) performing the work shall be responsible only for the work they perform. When available all units shall be installed in accordance with the manufacturer's installation manual. Requirements when the manufacturer's installation manual is not available:

(1) blocking: all piers and footings shall be installed in such a manner that the manufactured home shall be leveled;

(2) all marriage joints in multi-wide homes shall be installed to prevent air infiltration;

(3) all roofs and floor marriage joints shall be lag bolted no more than four (4') feet apart; beam support blocking must be provided.

F. Materials.

(1) Standard eight inch by eight inch by sixteen inch (8"X8"X16") hollow, concrete or concrete masonry unit (CMU), or other listed material may be used for block pier construction.

(2) Standard eight inch by four inch by sixteen inch (8"X4"X16") solid concrete or cinder blocks or other listed materials may be used for pier, top cap and footing construction.

G. Footings.

(1) Each pier shall have a footing beneath it of solid concrete or CMU or other listed material with a minimum sixteen inch by sixteen inch (16"X16") ground bearing surface four (4") inches thick.

(2) Two (2) eight inch by four inch by sixteen inch (8"X4"X16") solid blocks may be used for a footing provided they are placed together with seam between the two blocks running parallel with the frame of the manufactured home.

(3) Any concrete ribbon footings installed by the licensee shall be a minimum of six (6") inches thick by sixteen (16") inches wide and centered as closely as possible to the center of the frame members.

(4) Other listed materials which provide equivalent load bearing capacity and resistance to decay may be used, when they receive prior approval by the division.

H. Spacing.

(1) The maximum distance allowed between piers is eight (8') feet on center.

(2) Piers shall be placed within three (3') feet from each end of the manufactured home.

(3) Exceptions. If the wheel space of the manufactured home does not permit eight (8') foot blocking, additional support shall be provided at both ends of the wheel space.

I. Concrete masonry unit (CMU) piers, top caps and shims.

(1) CMU piers shall be positioned perpendicular to the frame of the manufactured home.

(2) Each CMU pier must have a minimum four (4") inch solid top cap or two (2") inch nominal wood cap which has the same perimeter dimension as the pier.

(3) A maximum of four and one-half (4-1/2") inches of wood are allowed on top of each CMU pier. Each layer of shims shall be driven from the opposite direction as the shim below it. Concrete masonry unit's (CMU) pier heights: when the footings, CMU piers and wood exceed forty-one (41") inches in height, the CMU piers must be constructed of double tiers of interlocking blocks. When the footings, CMU piers and wood exceed forty- eight (48") inches in height, the interlocking blocks shall be filled with concrete and reinforced with four (4) three-eighths (3/8") inch rebar. When the footings, CMU piers and wood exceed sixty (60") inches in height, the pier construction must be designed by a New Mexico licensed professional engineer and submitted to the division for approval.

J. Pre-fabricated piers.

(1) All piers shall be approved by the division prior to installation.

(2) The spacing of piers shall be the same as for block piers.

(3) One (1) listed, treated, sixteen inch by sixteen inch (16"X16") pad may be used with each pier as a footing.

(4) The maximum height that a pier jack extension shall be raised is two (2") inches.

(5) The maximum height for piers, including the footing and jack extension, is thirty-four (34") inches.

(6) The flanges on the top of the jack extension shall be alternated.

K. Other piers: all other piers shall be pre-approved by the division prior to their use or installation.

L. Multi-wide homes shall be supported within two (2) feet of each end and ten (10') feet on center (O.C), and or on each end of any opening exceeding four (4') feet along the marriage line.

M. Perimeter support blocking on used homes shall be supported on each side of all egress doorways and on each side of any opening four (4') feet or larger to allow for proper structural support.

[14.12.5.10 NMAC - Rp, 14.12.2.56 NMAC, 12-01-10]

14.12.5.11 PERMANENT FOUNDATION SYSTEM (New or used; pre-owned or resold): The following requirements apply to new, used, pre-owned or resold manufactured homes, unless otherwise indicated.

A. These standards are minimum state requirements and they are applicable to new and used home installations, unless expressly specified otherwise. The division may approve other permanent foundations when the manufacturer's installation manual does not make a provision for permanent foundations or is not available. Two sets

of drawings submitted by a New Mexico licensed engineer or a HUD approved D.A.P.I.A engineer may be submitted to the division for review, and subsequent denial or approval along with a certificate that the engineer has contacted the home's manufacturer. No political subdivision of the state shall regulate the installation or construction standards, of a manufactured home, including foundation systems.

B. Perimeter enclosement.

(1) All materials used for a perimeter enclosement must be approved by the division.

(2) Materials shall be installed in accordance with the manufacturer's recommended installation instructions or in accordance with the minimum standards accepted by the division.

(3) The manufactured home's perimeter enclosement must be self-ventilating, and no flammable objects may be stored under the manufactured home.

(4) An access or inspection panel shall be installed in the perimeter enclosement and shall be located so that utilities and blocking may be inspected.

(5) All vents and openings shall be installed to prevent entry of rodents and direct rainfall not to exceed ¼ inch mesh.

(6) All perimeter enclosements in excess of thirty inches (30") in height must be supported vertically at least every four (4') feet or installed according to the enclosement manufacturer's specifications.

C. New home installations. The manufacturer's installation manual shall be followed for all new homes installed within the state of New Mexico. The person(s) performing the work to install a new home shall be responsible to insure that all necessary installation permits have been obtained by the homeowner, customer or installer, to be determined in writing prior to the delivery of subject home. Compliance with permanent foundation criteria, site work 14.12.5.9 NMAC, planning, and zoning, slope and drainage requirements is the sole and separate responsibility of the persons, companies or contractors performing such work.

D. Installation of used, pre-owned or resold manufactured homes. The installer of a used, pre-owned or resold manufactured home shall be responsible to insure that all necessary installation permits have been obtained by the customer, retailer or installer. Compliance with permanent foundation criteria, site work 14.12.5.9 NMAC, planning, and zoning, slope and drainage requirements is the sole and separate responsibility of the persons, companies or contractors performing such work. The manufacturer's manual shall be kept with the subject home at all times. The installer shall use the manufacturer's installation instructions and installation manual when available.

E. Re-installed units: The following regulations shall apply to all homes being re-installed where no manufacturer's installation manual is provided.

(1) The lowest point of the frame shall be a minimum of eighteen (18") inches above the ground level under the manufactured home.

(2) The slope around the manufactured home shall provide for the control and drainage of surface water and shall be sufficient to prevent the collection of water under the home or around the perimeter of the home.

F. A minimum thirty-two inch by thirty-two inch (32"X32") access or inspection panel shall be installed a minimum of three (3") inches above grade and located to allow inspection at any time. The cover on the exterior access inspection panel must be constructed to exclude entry of vermin and water.

G. Footings and piers.

(1) The manufactured home shall be installed on ribbon footings set on the undisturbed ground not less than five and one-half (51/2") inches in thickness and sixteen (16") inches in width with two (2) pieces of continuous three-eighth (3/8") inch rebar or a number 10 gauge re-mesh wire installed in the footing. All footings shall be constructed of a minimum of three thousand (3000) pound concrete. All above grade footings shall be constructed with forms (wood, fiberboard, metal, plastic), used to contain poured concrete while in a plastic state. These forms must be firmly braced to withstand side pressure or settlement and to maintain design dimensions. Finished concrete surface(s) shall be smooth and level to fully accept and support pier installation(s). Forms may be removed upon sufficient hardening of concrete. The home may be placed whenever concrete is properly cured, minimum of seven (7) days.

(2) Piers shall be constructed in accordance with 14.12.5.10 NMAC of these regulations.

(3) The steel frame must be attached to the footing supporting the structure by means of a listed anchoring device at least every twelve (12) feet at a maximum and no more than two (2) feet from each end wall.

H. Ventilation:

(1) All manufactured homes shall have one (1) square foot of unrestricted venting area for every one hundred-fifty (150) square feet of enclosed floor space. Vents shall be uniformly distributed on the two (2) opposite long- walls. At least one vent shall be located within four (4) feet of each end-wall.

(2) Vents shall be constructed and installed to exclude entry of vermin and water.

I. Alternative permanent foundation systems:

(1) Other types of permanent foundation systems designed for the purpose of classifying an installation as a permanent foundation shall be submitted on an individual basis. These require submittal of installation instructions, calculations and design layouts. All submissions shall be stamped by a New Mexico licensed engineer, and each application shall be region specific. Commercially packaged systems must submit their complete installation and design package to be kept on file with the division. It shall be the responsibility of the system proprietor to submit any updates or alterations of the system.

(2) Any installation of an alternative foundation system on a new home or any home within two years of original purchase must be installed based upon the manufacturer's written approval or be included in the manufacturer's installation manual.

[14.12.5.11 NMAC - Rp, 14.12.2.57 NMAC, 12-01-10]

14.12.5.12 RETAINING WALL (New or used; pre-owned or resold): The following requirements apply to new, used, pre-owned or resold manufactured homes, unless otherwise indicated.

A. A retaining wall shall consist of a reinforced concrete footing and a masonry stem wall or other division approved material. Designs for retaining walls shall meet division approval and shall be submitted to the division in advance. Two sets of drawings stamped by a New Mexico licensed engineer shall be submitted to the division for review, denial or approval.

B. The retaining wall shall not be used as support for the outer edge of the manufactured home, unless called for by the manufacturer's installation instructions.

C. Retaining walls shall be constructed pursuant to the 1997 edition of the uniform building code.

[14.12.5.12 NMAC - Rp, 14.12.2.58 NMAC, 12-01-10]

14.12.5.13 INSTALLATION OF FIREPLACES AND SOLID FUEL-BURNING STOVES (New or used; pre-owned or resold): The following requirements apply to new, used, pre-owned or resold manufactured homes, unless otherwise indicated. All solid fuel-burning factory-built fireplaces and stoves must be installed according to the manufacturer's installation instructions for use in a manufactured home and in compliance with Section 3280.709 of the H.U.D. Manufactured Housing Construction and Safety Standards. The H.U.D. standards control in the case of inconsistencies. Each installation shall be permitted and inspected.

[14.12.5.13 NMAC - Rp, 14.12.2.61 NMAC, 12-01-10]

14.12.5.14 WATER SUPPLY AND TESTING (New or used; pre-owned or resold): The following requirements apply to the installation of new, used, pre-owned or resold manufactured homes, unless otherwise indicated.

A. General requirements. All water line connections from on-site utility terminals to a manufactured home produced under the Federal Manufactured Home Construction and Safety Standards Act shall be made according to the manufacturer's installation instructions.

B. Testing procedures. The water system must be tested for leaks after completion at the site. Water supply testing shall be completed in according with the manufactures testing instructions.

C. Used, pre-owned and resales. If the manufacturer's installation and testing instructions are not available for a used or pre-owned or resold manufactured home, the following requirements apply:

(1) General requirements.

(a) All exterior openings shall be sealed to resist the entrance of rodents.

(b) All piping and fixtures provided by the installer, subject to freezing temperatures, shall be insulated or protected to prevent freezing.

(c) If a heat tape is used, it must be U.L. listed.

(2) Water connections.

(a) Piping must be of standard weight brass, galvanized wrought iron, approved CPCV, galvanized steel, grade K, L or M copper tubing or other listed materials.

(b) The size of piping shall not be less than one- half (1/2) inch I.D. tubing as listed in these regulations.

[14.12.5.14 NMAC - N, 12-01-10]

14.12.5.15 Drainage System and Testing (New or used; pre-owned or resold): The following requirements apply to the installation of new, used, pre-owned or resold manufactured homes, unless otherwise indicated.

A. General requirements. The drainage system connection for a manufactured home produced under the Federal Manufactured Home Construction and Safety Standards Act shall comply with the manufacturer's installation instructions.

B. Testing procedures. The drainage system must be tested for leaks after completion at the site. Drainage system testing shall be completed in accordance with the manufactures testing instructions.

C. Used, pre-owned and resales. If the manufacturer's installation or testing instructions are not available for a used or pre-owned or resold manufactured home, the following requirements apply.

(1) General requirements.

(a) All exterior openings shall be sealed to resist the entrance of rodents.

(b) All joints, connections, devices and piping in the system, downstream of traps and vents, shall be made gas-tight.

(2) Materials.

(a) Sewer hookups shall be made with cast iron pipe, or minimum scheduled forty (40) ABS OR PVC plastic pipe, or listed material.

(b) The ABS black and PVC white may be mixed provided that a listed bonding glue is used.

(c) Plastic pipe and fittings shall be joined with a listed bonding glue which shall insure a positive seal at all joints.

(d) Ninety (90) degree elbows used in making the drainage line connection shall be medium or long sweep elbows.

(3) Connection to yardline.

(a) The drainage line shall be a minimum three (3) inch I.D. pipe.

(b) All piping must be supported at least every four (4) feet by adequate anchored galvanized, or listed protected metal straps or hangers, or by blocks.

(c) The line must have a slope of at least one-quarter (1/4) inch drop per one (1) foot of horizontal run.

(d) All installations must have at least one (1) accessible clean out.

(e) Any bend in the line of one hundred eighty degrees (180) or more shall have a clean-out.

[14.12.5.15 NMAC - Rp, 14.12.2.55 NMAC, 12-01-10]

14.12.5.16 Electrical Systems, Equipment and Testing (New or used; pre-owned or resold): The following requirements apply to the installation of new, used, pre-owned or resold manufactured homes, unless otherwise indicated.

A. General requirements. The electrical system and equipment connection for a manufactured home produced under the Federal Manufactured Home Construction and Safety Standards Act shall comply with the manufacturer's installation instructions.

B. Testing procedures. After completion of all electrical wiring and connections, including crossovers, electrical lights, and ceiling fans, the electrical system must be tested at the site. Electrical systems and equipment testing shall be completed in accordance with the manufactures testing instructions.

C. Used, pre-owned and resales. If the manufacturer's installation instructions are not available for a used or pre-owned or resold manufactured home, the following requirements apply.

(1) General requirements.

(a) All manufactured homes shall be connected to the electrical power by means of a four (4) wire connection, with the fourth (4th) (green) wire acting as an equipment ground, grounding the home to the service pole or pedestal.

(b) No electrical power connection shall be spliced unless the splice is protected in an approved weather-tight raceway.

(c) Aluminum wire may be used in the state of New Mexico in size #2 or larger.

(i) Aluminum wire shall not be directly connected to copper wire without the use of an approved disconnect device.

(ii) Metallic gas, water, waste pipes, and air-circulating ducts on a manufactured home shall be bonded. They will be considered bonded if they are attached to the terminal on the chassis by clamps, solderless connectors, or by suitable grounding type straps.

(iii) All electrical wiring installed to an evaporative cooler must be installed in a protective conduit and the cooler must be installed in accordance to the manufacturer's listed instructions.

(iv) All electrical wiring installed to any air conditioning unit must be installed in accordance to the air conditioners manufacturer's listed instructions.

(2) Power cords.

(a) If the manufactured home is rated less than one hundred (100) AMPS and does not use an underground electrical supply, a listed power cord of the proper sizing may be installed pursuant to the manufacturer's installation manual or the national electric code (NEC).

(b) Only one (1) power cord may be connected to a manufactured home.

(c) The power cord must be a single continuous length and shall not exceed either the length requirements of the (NEC) or the rated ampacity, including voltage drop.

(d) When a power cord is used, it shall be protected at the connection by an over-load device sized pursuant to the NEC and the ampere rating of the cord.

(e) The power supply to the manufactured home shall be a feeder assembly consisting of not more than one manufactured home power-supply cord with integral molded cap.

(f) If the manufactured home has a power-supply cord, it shall be permanently attached to the distribution panelboard or to a junction box permanently connected to the distribution panelboard, with the free end terminating in an attachment plug cap.

(g) A listed clamp or the equivalent shall be provided at the distribution panelboard knock out to afford strain relief for the cord to prevent strain from being transmitted to the terminals when the power-supply cord is handled in its intended manner.

(h) The cord shall be of an approved type with four conductors, one of

which shall be identified by a continuous green color or a continuous green color with one or more yellow stripes for use as the grounding conductor.

(i) Length of supply cord. The overall length of a power-supply cord, measured from the end of the cord, including bared leads, to the face of the attachment-plug cap shall not be less than 21 feet and shall not exceed 36 ½ feet.

(j) The power-supply cord shall bear the following marking: "For use with manufactured homes."

(k) The point of entrance of the feeder assembly to the manufactured home shall be in the exterior wall, floor, or roof, in the rear third section of the manufactured home.

(l) Where the cord passes through walls or floors, it shall be protected by means of conduit and bushings. The cord may be installed within the manufactured home walls, provided a continuous raceway is installed from the branch-circuit panelboard to the underside of the manufactured home floor. The raceway may be rigid conduit, electrical metallic tubing or polyethylene (PE), polyvinylchloride (PVC) or acrylonitrile-butadiene-styrene (ABS) plastic tubing having a minimum schedule forty.

(3) Underground electrical supply.

(a) Manufactured homes which are rated at one hundred (100) AMPS and over, and which use an underground electrical supply, must be connected by a permanently installed feeder circuit.

(b) All underground feeder assemblies shall meet the requirements set forth in the edition of the national electrical code currently in effect pursuant to the Construction Industries Licensing Act, and must comply with manufacturers installation manual.

(4) Overhead electrical feeder.

(a) A manufactured home may have an overhead feeder installed provided it meets the following requirements.

(b) The mast weatherhead must be installed in accordance with the instructions provided by the manufacturer and must be located on the load bearing exterior wall.

(5) Overhead electrical supply.

(a) Overhead electrical supply may only be made to a manufactured home that is installed on an approved permanent foundation and pursuant to 14.12.5.11 NMAC.

(b) The mast weatherhead must be installed in accordance with the instructions provided by the manufacturer and the NEC, and must be located on the load bearing exterior wall.

(6) All connections must be installed in accordance with the service requirements of the national electrical code, NFPA No. 70 as set forth in the edition of the national electrical code currently in effect pursuant to the Construction Industries Licensing Act.

[14.12.5.16 NMAC - Rp, 14.12.2.53 NMAC, 12-01-10]

14.12.5.17 Manufactured Home Connected to LP Gas: CID negotiations **(New or used; pre-owned or resold)**: The following requirements apply to the installation of new, used, pre-owned or resold manufactured homes, unless otherwise indicated.

A. Installation or repair of liquefied petroleum gas piping or appliances to or in a manufactured home shall be performed by a licensee holding a New Mexico LP gas classification issued by the liquefied petroleum gas bureau of the construction industries division of the regulation and licensing department.

B. Gas connection to an on-site utility terminal shall be performed by a licensee holding a New Mexico LP gas classification issued by the liquefied petroleum gas bureau of the construction industries division of the regulation and licensing department.

C. The licensee who signs the permit certification is responsible for checking the gas system and appliances to insure compliance with all applicable state and federal regulations.

D. All materials used for the installation, extension, alteration or repair of any gas piping system shall be new and free from defects or internal obstruction. Inferior or defective materials shall be removed and replaced with acceptable materials.

[14.12.5.17 NMAC - Rp, 14.12.2.51 NMAC, 12-01-10]

14.12.5.18 MANUFACTURED HOME CONNECTED TO NATURAL GAS (New or used; pre-owned or resold): The following requirements apply to the installation of new, used, pre-owned or resold manufactured homes, unless otherwise indicated.

A. General requirements. The fuel supply system installation and connection for a manufactured home produced under the Federal Manufactured Home Construction and Safety Standards Act shall comply with the manufacturer's installation instructions.

B. Testing procedures. The gas system must be tested for leaks after completion at the site. The fuel supply system testing shall be completed in accordance with the manufactures testing instructions.

C. Used, pre-owned and resales. If the manufacturer's installation instructions are not available for a used or pre-owned or resold manufactured home, the following requirements apply:

(1) Gas connections.

(a) No riser, inlet or gas connection or inlet gas connection shall be located beneath any manufactured home or any exit. No manufactured home shall be installed over a gas yardline.

(b) The gas inlet on the manufactured home shall protrude no more than six (6) inches from the manufactured home. The inlet shall be rigidly anchored or strapped to a structural member within six (6) inches of the point where it enters beneath the manufactured home.

(c) The gas riser shall be located within twenty-four (24) inches of the manufactured home.

(d) The size of the gas connections shall not be less than three-quarters (3/4) inch I.D. standard iron pipe size; or the connector shall be the same size as the inlet.

(e) The main gas connection shall be doped and shall be an approved flexible-type connection. Approved connectors are:

(i) flex connectors: the maximum length for flex connectors is thirty-six (36) inches; a list of approved flex connectors is maintained by the division;

(ii) black or galvanized malleable iron pipe and fittings may be used to construct a double- swing joint; this connection requires the use of elbows, unions and nipples constructed in such a manner as to allow the connection to give without breaking in all of the three (3) dimensions that a shifting unit might move; no elbows that are used in the double- swing joint shall be beneath the manufactured home;

(iii) all fittings and nipples except unions used in the gas piping system of a manufactured home must have tapered threads.

(f) Any copper tubing used for natural gas must be annealed type grade K or L, internally tinned.

(g) Gas shut off valves shall be installed on each natural gas riser at a height at not less than four (4) inches above grade. The shut-off valve shall be located between the on-site utility terminal and the outside flexible connector of the manufactured home.

(h) All materials used for the installation, extension, alteration or repair of any gas piping system shall be new and free from defects or internal obstruction. Inferior or defective materials shall be removed and replaced with acceptable materials.

(i) Ratings of gas appliances are based on sea level operations. Appliance ratings shall be reduced at the rate of four percent (4%) for every one thousand (1,000) feet above sea level for appliances above two thousand (2,000) feet.

(2) Exterior gas piping. All gas piping beneath a manufactured home shall be adequately supported by galvanized, or equivalently protective metal straps or hangers at least every four (4) feet, except,

where adequate support and protection is provided by structural members.

(a) Gas shut-off valves shall not be placed beneath a manufactured home.

(b) Any extensions or alterations made to the gas piping system for the purpose of establishing the supply inlet for connection to the riser may not reduce or restrict the gas piping size from that of the original inlet.

(c) There shall be only one point of crossover between the sections of a multi-wide manufactured home which must be readily accessible from the outside.

(d) The connector used for the crossover on multi-wide manufactured homes when gas is supplied to more than one (1) section, must be made by a listed "quick disconnect" device, which shall be designed to provide a positive seal of the supply side of the gas system when such device is separated.

(e) The crossover connection shall be of the same size as the piping with which it directly connects.

(f) When the gas riser is located on the opposite side of the manufactured home from the supply inlet, the gas piping may be run under the home in compliance with Paragraph (2) of Subsection C of 14.12.5.18 NMAC.

(g) All exterior openings shall be sealed to resist the entrance of rodents.

(3) Interior gas piping. Each gas-fired appliance must have a listed shut-off valve located within three (3) feet of the appliance and located in the same room as the gas appliance. Appliance connectors shall not exceed three (3) feet in length, except for range connectors, which shall not exceed six (6) feet in length.

(4) Bond of gas piping.

(a) Gas piping shall not be used as an electrical ground.

(b) Gas piping shall be bonded. Metallic gas piping shall be considered bonded if it is connected to the terminal on the chassis of the manufactured home by clamps, solderless connectors or by suitable ground-type straps.

(5) Pressure tests.

(a) Before the gas supply may be turned on, each manufactured home must pass a pressure test at the installation site.

(b) Before appliances are connected, the piping shall withstand a pressure test of at least six (6) inches mercury or three (3) PSI Gauge for a period of not less than ten (10) minutes without showing a drop in pressure. Pressure shall be measured with a mercury manometer, slope gauge or equivalent device calibrated to read in increments of not greater than 1/10 pound. The source of normal operating pressure shall be isolated before pressure tests are made. The temperature of the ambient air on the piping must remain constant throughout the test.

(c) After the appliances are connected, the piping system must be pressurized to not less than the pressure the supplier furnishes to the manufactured home's piping. All appliance connections shall be checked for leakage.

[14.12.5.18 NMAC - Rp, 14.12.2.47 NMAC, 14.12.2.48 NMAC, 14.12.2.49 NMAC, 14.12.2.50 NMAC & 14.12.2.52 NMAC, 12-01-10]

HISTORY OF 14.12.5 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

CIC 70-5, 1969 Standards for Mobile Homes, filed 09-02-70

CIC MB 70-9, Standard for Mobile Homes for New Mexico, filed 10-23-70

CIC 71-5, 1971 Mechanical Mobile Home Code for New Mexico, filed 09-16-71

CIC 72-3, 1972 Standards for Mobile Homes, filed 08-18-72

CIC 73-1, 1973 Standards for Mobile Homes, filed 10-30-73

CIC MHB 75-4, 1975 Standard for Mobile Home Regulations pertaining to Manufacturers, Dealers, and Installers, filed 10-08-75

CIC MHB 77-7, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers, and Repairmen, filed 04-02-77

MHD 77-1, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers and Repairmen, filed 04-26-77

MHD 81-1, Mobile Housing Division Regulations, filed 05-27-81

MHD 83-1, Manufactured Housing Division Regulations, filed 08-18-83

MHD 85-1, Manufactured Housing Division Regulations, filed 02-01-85

MHD 88-1, Manufactured Housing Division Regulations, filed 08-09-88

MHD 90-1, Manufactured Housing Division Regulations, filed 12-08-89

History of Repealed Material:

14 NMAC 12.2, Manufactured Housing Requirements (filed 9-16-97) repealed 12-01-1998.

14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) repealed 6-01-1999.

14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) repealed 9-14-2000.

14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) repealed 12-01-2010.

Other History:

MHD 90-1, Manufactured Housing Division Regulations (filed 12-08-89) was renumbered, reformatted, amended and replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 12-01-1998.

14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) was replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 6-01-1999.

14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) was replaced by 14.12.2 NMAC, Manufactured Housing Requirements, effective 9-14-2000.

Those applicable portions of 14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) were replaced by 14.12.5 NMAC, Installation Requirements, effective 12-01-2010.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

MANUFACTURED HOUSING DIVISION

TITLE 14 HOUSING AND CONSTRUCTION

CHAPTER 12 MANUFACTURED HOUSING

PART 6 WARRANTY

14.12.6.1 ISSUING AGENCY: The Manufactured Housing Division of the Regulation and Licensing Department.

[14.12.6.1 NMAC - Rp, 14.12.2.1 NMAC, 12-01-10]

14.12.6.2 SCOPE: These rules and regulations apply to all manufacturers, dealers, brokers, salesman, installers, repairman, contractors, and purchasers of manufactured homes in the state of New Mexico.

[14.12.6.2 NMAC - Rp, 14.12.2.2 NMAC, 12-01-10]

14.12.6.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Manufactured Housing Act, Sections 60-14-1 through 60-14-20 NMSA 1978.

[14.12.6.3 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.6.4 DURATION: Permanent.

[14.12.6.4 NMAC - Rp, 14.12.2.4 NMAC, 12-01-10]

14.12.6.5 EFFECTIVE DATE: 12-01-10 unless a later date is cited at the end of a section.

[14.12.6.5 NMAC - Rp, 14.12.2.5 NMAC, 12-01-10]

14.12.6.6 OBJECTIVE: The objective of 14.12.6 NMAC is to adopt a

requirement that dealers, repairmen and installers provide to customers' warranties on their product and work and to specify the minimum requirements for such warranties.
[14.12.6.6 NMAC - Rp, 14.12.2.6 NMAC, 12-01-10]

14.12.6.7 DEFINITIONS: [RESERVED]
[Refer to 14.12.1.7 NMAC]

14.12.6.8 WARRANTIES: The following warranties shall be issued by each licensee as prescribed: If a licensee fails to correct a violation within the prescribed warranty period and the consumer has written documentation to the licensee before the expiration of the warranty, the consumer may file a written complaint with the division within a two year period from the start of the original warranty.
[14.12.6.8 NMAC - Rp, 14.12.2.33 NMAC, 12-01-10]

14.12.6.9 MANUFACTURER'S WARRANTY:

A. The manufacturer's warranty shall be set forth in a separate written document, which shall be delivered to the consumer and shall contain, but is not limited to, the following terms:

(1) that the manufactured home complies with the act and these regulations;

(2) that the warranty shall be in effect for a period of at least one (1) year from the date of delivery to the consumer and is not restricted to the original consumer and shall carry forward to subsequent owners during the one (1) year period;

(3) that the manufactured home is free from defects in materials and workmanship;

(4) that the manufacturer warrants all appliances and equipment installed in the manufactured home by the manufacturer to be free from defects in material and workmanship, unless the manufacturer furnishes a valid warranty from the manufacturer or dealer of the appliances and equipment warranting against any defects in materials and workmanship to the consumer for a period of at least one (1) year from date of delivery;

(5) that the manufacturer shall take appropriate corrective action, within a reasonable period of time, after the warranty violation has been communicated to the manufacturer by the division or by the consumer;

(6) that the warranty shall contain the license number, address and telephone number of the manufacturer where notices of defects or warranty violations may be given and shall also contain the H.U.D. label number, serial number and year model of the manufactured home involved;

(7) the warranty shall not be voided as long as the installation of the manufactured home conforms to these regulations.

B. Each manufacturer shall warrant repair work performed under the one-year warranty. Such repair work shall be warranted for a period of at least 90 days or until the end of the original one-year warranty, whichever is later. The warranty need not be in writing.

C. All work performed under a Manufacturer II license must be warranted against defects in materials and workmanship for a period of at least six (6) months.
[14.12.6.9 NMAC - Rp, 14.12.2.34 NMAC, 12-01-10]

14.12.6.10 DEALER'S WARRANTY: (New homes only).

A. The dealer's warranty shall be set forth in a separate written document which shall be delivered to the consumer on or before the date of delivery of the manufactured home to the consumer and shall contain, but is not limited to, the following term:

(1) that all changes, additions, or alterations made to the manufactured home by the dealer are free from defects in materials and workmanship; and that all appliances and equipment installed by the dealer are free from defects in materials and workmanship unless the dealer furnishes a valid written warranty from the manufacturer or dealer of the appliances and equipment to the consumer warranting against any defect in materials or workmanship to the consumer for a period of time customary in the industry for a warranty for the particular appliance or equipment;

(2) that all warranties shall be in effect for a period of at least one (1) year from the date of delivery to the consumer and is not restricted to the original consumer and shall carry forward to subsequent owners during the one (1) year period;

(3) that the dealer shall take appropriate corrective action within a reasonable period of time after the warranty violation has been communicated to the dealer by the division or by the consumer;

(4) that the warranty shall contain the license number, address and telephone number of the dealer where notice of defects or warranty violations may be given and shall also contain the H.U.D. label number, serial number and year model of the manufactured home involved.

B. Each dealer shall warrant repair work on changes, additions or alterations made or authorized by the dealer performed under the one-year warranty. Such repair work shall be warranted for a period of at least 90 days or until the end of the original one - year warranty, whichever is later. This warranty need not be in writing.
[14.12.6.10 NMAC - Rp, 14.12.2.35 NMAC, 12-01-10]

14.12.6.11 INSTALLER'S AND REPAIRMAN'S WARRANTY:

A. Installers and repairmen of manufactured homes must each provide the consumer at the time of installation or repair with a written warranty which shall contain, but is not limited to, the following terms:

(1) that all services performed by the installer or repairman have been performed in compliance with the act and these regulations;

(2) that all labor and materials furnished by the installer for blocking and leveling the manufactured home are free from defects in materials and workmanship for ninety (90) days from the date of installations; re-leveling required as a result of ground settling or site conditions does not fall within the scope of this warranty.

(3) that any installation or repair, appliance or accessory sold by the installer or the repairman to the consumer other than blocking and leveling are free from defects in materials and workmanship unless the installer or repairman shall provide the consumer with a valid written warranty from the maker or dealer of the materials, appliances or accessory warranting against any defect in the materials or workmanship for a period of time customary in the industry for a warranty for the particular appliance, equipment or material;

(4) that the installer or repairman shall take the appropriate corrective action within a reasonable period of time after a warranty violation has been communicated to the installer or repairman by the division or the consumer;

(5) that the warranty shall contain the license number, address and telephone number of the installer or repairman where notice of defects and warranty violations may be given and shall also contain the H.U.D. label number, if applicable, and serial number of the manufactured home involved.

B. Each installer and repairman shall warrant against defects in materials or workmanship and all repair work performed by him under the warranty required in this section. Such repair work shall be warranted for a period of at least 90 days or until the end of the original warranty, whichever is later. This warranty need not be in writing.
[14.12.6.11 NMAC - Rp, 14.12.2.36 NMAC, 12-01-10]

HISTORY of 14.12.6 NMAC:
Pre-NMAC History:
Material in the part was derived from that previously filed with the commission of public records - state records center and

archives:
CIC 70-5, 1969 Standards for Mobile Homes, filed 09-02-70
CIC MB 70-9, Standard for Mobile Homes for New Mexico, filed 10-23-70
CIC 71-5, 1971 Mechanical Mobile Home Code for New Mexico, filed 09-16-71
CIC 72-3, 1972 Standards for Mobile Homes, filed 08-18-72
CIC 73-1, 1973 Standards for Mobile Homes, filed 10-30-73
CIC MHB 75-4, 1975 Standard for Mobile Home Regulations pertaining to Manufacturers, Dealers, and Installers, filed 10-08-75
CIC MHB 77-7, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers, and Repairmen, filed 04-02-77
MHD 77-1, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers and Repairmen, filed 04-26-77
MHD 81-1, Mobile Housing Division Regulations, filed 05-27-81
MHD 83-1, Manufactured Housing Division Regulations, filed 08-18-83
MHD 85-1, Manufactured Housing Division Regulations, filed 02-01-85
MHD 88-1, Manufactured Housing Division Regulations, filed 08-09-88
MHD 90-1, Manufactured Housing Division Regulations, filed 12-08-89

History of Repealed Material:
14 NMAC 12.2, Manufactured Housing Requirements (filed 9-16-97) repealed 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) repealed 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) repealed 9-14-2000.
14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) repealed 12-01-2010.

Other History:
MHD 90-1, Manufactured Housing Division Regulations (filed 12-08-89) was renumbered, reformatted, amended and replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) was replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) was replaced by 14.12.2 NMAC, Manufactured Housing Requirements, effective 9-14-2000.
Those applicable portions of 14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) were replaced by 14.12.6 NMAC, Warranty, effective 12-01-2010.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 12 MANUFACTURED HOUSING
PART 8 RENEWAL AND CONTINUING EDUCATION

14.12.8.1 ISSUING AGENCY: The Manufactured Housing Division of the Regulation and Licensing Department.
[14.12.8.1 NMAC - Rp, 14.12.2.1 NMAC, 12-01-10]

14.12.8.2 SCOPE: These rules and regulations apply to all manufacturers, dealers, brokers, salesman, installers, repairman, contractors, and purchasers of manufactured homes in the state of New Mexico.
[14.12.8.2 NMAC - Rp, 14.12.2.2 NMAC, 12-01-10]

14.12.8.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Manufactured Housing Act, Sections 60-14-1 through 60-14-20 NMSA 1978.
[14.12.8.3 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.8.4 DURATION: Permanent.
[14.12.8.4 NMAC - Rp, 14.12.2.4 NMAC, 12-01-10]

14.12.8.5 EFFECTIVE DATE: 12-01-10 unless a later date is cited at the end of a section.
[14.12.8.5 NMAC - Rp, 14.12.2.5 NMAC, 12-01-10]

14.12.8.6 OBJECTIVE: The objective of 14.12.8 NMAC is to set forth the license renewal and continuing education requirements for individuals licensed under the Manufactured Housing Act and these regulations.
[14.12.7.6 NMAC - Rp, 14.12.2.6 NMAC, 12-01-10]

14.12.8.7 DEFINITIONS: [RESERVED]
[Refer to 14.12.1.7 NMAC]

14.12.8.8 RENEWALS:

A. Each license shall be renewed annually during its anniversary month. The division shall mail a renewal notice to each current licensee at least 30 days prior to the expiration date of the license.

B. Renewal notices will be mailed to the last known address on file with the division. It is the responsibility of the licensee to keep the division informed of any changes in address.

C. The licensee is responsible for renewing his license. Failure to receive the renewal notice shall not relieve the licensee of the responsibility of renewing his license before the expiration date.

D. The filling date of a renewal application shall be the date the envelope is postmarked or, if hand delivered, the date the renewal application is received by the division.

E. The division shall allow a 30-day grace period after a license has expired for a licensee to renew without penalty. After the 30-day grace period the licensee must pay a late renewal fee equal to one dollar ($1.00) for each day, up to thirty days, that has elapsed since the 30-day grace period and thereafter for a fee equal to twice the amount of the annual license fee.

F. If a license is expired for one-year following the expiration date the license shall be cancelled and the licensee must re-apply for licensure, which includes taking and passing any required examination.
[14.12.8.8 NMAC - Rp, 14.12.2.26 NMAC, 12-01-10]

14.12.8.9 INACTIVE LICENSE:

A. A licensee can submit a written request to the division that a license be placed in inactive status. The licensee must surrender his license certificate to the division and submit a written statement indicating that no work will be performed under the inactive license during the period that the license is in inactive status.

B. Regulations pertaining to renewal of any license or to bonding requirements shall apply to any license during the period the license is in inactive status.

C. Inactive status of a license shall not affect any pending investigation or disciplinary action against a licensee.
[14.12.8.9 NMAC - Rp, 14.12.2.27 NMAC, 12-01-10]

14.12.8.10 CONTINUING EDUCATION: In order to qualify for annual renewal of an installer or repairman license, the licensee must provide evidence of completing 3 hours of division approved continuing education.
[14.12.8.10 NMAC - N, 12-01-10]

HISTORY of 14.12.8 NMAC:
Pre-NMAC History:
Material in the part was derived from that

previously filed with the commission of public records - state records center and archives:
CIC 70-5, 1969 Standards for Mobile Homes, filed 09-02-70
CIC MB 70-9, Standard for Mobile Homes for New Mexico, filed 10-23-70
CIC 71-5, 1971 Mechanical Mobile Home Code for New Mexico, filed 09-16-71
CIC 72-3, 1972 Standards for Mobile Homes, filed 08-18-72
CIC 73-1, 1973 Standards for Mobile Homes, filed 10-30-73
CIC MHB 75-4, 1975 Standard for Mobile Home Regulations pertaining to Manufacturers, Dealers, and Installers, filed 10-08-75
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MHD 81-1, Mobile Housing Division Regulations, filed 05-27-81
MHD 83-1, Manufactured Housing Division Regulations, filed 08-18-83
MHD 85-1, Manufactured Housing Division Regulations, filed 02-01-85
MHD 88-1, Manufactured Housing Division Regulations, filed 08-09-88
MHD 90-1, Manufactured Housing Division Regulations, filed 12-08-89

History of Repealed Material:
14 NMAC 12.2, Manufactured Housing Requirements (filed 9-16-97) repealed 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) repealed 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) repealed 9-14-2000.
14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) repealed 12-01-2010.

Other History:
MHD 90-1, Manufactured Housing Division Regulations (filed 12-08-89) was renumbered, reformatted, amended and replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) was replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) was replaced by 14.12.2 NMAC, Manufactured Housing Requirements, effective 9-14-2000.
Those applicable portions of 14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) were replaced by 14.12.8 NMAC, Renewal and Continuing Education, effective 12-01-2010.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 12 MANUFACTURED HOUSING
PART 9 INSPECTIONS

14.12.9.1 ISSUING AGENCY: The Manufactured Housing Division of the Regulation and Licensing Department.
[14.12.9.1 NMAC - Rp, 14.12.2.1 NMAC, 12-01-10]

14.12.9.2 SCOPE: These rules and regulations apply to all manufacturers, dealers, brokers, salesman, installers, repairman, contractors, and purchasers of manufactured homes in the state of New Mexico.
[14.12.9.2 NMAC - Rp, 14.12.2.2 NMAC, 12-01-10]

14.12.9.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Manufactured Housing Act, Sections 60-14-1 through 60-14-20 NMSA 1978.
[14.12.9.3 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.9.4 DURATION: Permanent.
[14.12.9.4 NMAC - Rp, 14.12.2.4 NMAC, 12-01-10]

14.12.9.5 EFFECTIVE DATE: 12-01-10 unless a later date is cited at the end of a section.
[14.12.9.5 NMAC - Rp, 14.12.2.5 NMAC, 12-01-10]

14.12.9.6 OBJECTIVE: The objective of 14.12.9 NMAC is to set forth the standard to determine habitability pre-owned manufactured homes, the requirements to auction pre-owned manufactured homes and manufactured housing division inspections.
[14.12.9.6 NMAC - Rp, 14.12.2.6 NMAC, 12-01-10]

14.12.9.7 DEFINITIONS: [RESERVED]
[Refer to 14.12.1.7 NMAC]

14.12.9.8 HABITABILITY: The following regulations apply only to pre-owned manufactured homes for the purpose of resale.

A. For purposes of this regulation or other laws of this state the term "habitable" as applied to manufactured housing is limited to and means that there are no known structural defects, damage or deterioration to the home which creates a dangerous or unsafe situation or condition and all plumbing, heating and electrical systems are in safe working order at the time of delivery.

B. Any home offered for resale that is not suitable for human habitation must be clearly marked, as such, with a posted sign not less than 18" x 12" with letters not smaller than one inch high. Also, all purchase agreements or contracts of sale must reflect that the consumer purchased the home "As Is - Not Suitable for Human Habitation".
[14.12.9.8 NMAC - N, 12-01-10]

14.12.9.9 AUCTIONS:

A. All pre-owned homes to be sold at an auction must meet the requirements as set forth in 14.12.9.8 NMAC of these regulations.

B. All homes to be auctioned will be sold through a bona fide manufactured home dealer licensed by the manufactured housing division.

C. All homes to be auctioned must be at the auction location one working day before the auction and the division must be notified in writing of all homes to be auctioned at least 5 days before the auction.

D. All documentation will be ready to transfer ownership at completion of sale.

E. The division will inspect each home and documents on each home to be auctioned.

F. All pre-owned homes to be auctioned must have affixed a pre-owned label as referred to in Subsection M of 14.12.10.8 NMAC of these regulations.

G. Any home not in compliance with these regulations will be posted with "Prohibited Sales Notice". Upon compliance to the regulation a fee of $60.00 will be paid for removal of notice prohibiting the sale.

H. Only licensed manufactured home dealers may purchase manufactured homes at an auction.
[14.12.9.9 NMAC - Rp, 14.12.2.23 NMAC, 12-01-10]

14.12.9.10 INSPECTIONS: Pursuant to the Manufactured Housing Act, division inspectors are authorized to conduct inspections, re-inspections or investigations of any section or component of a manufactured home, its installation, set-up or utility connection.
[14.12.9.10 NMAC - Rp, 14.12.2.37 NMAC, 12-01-10]

14.12.9.11 GENERAL:

A. An inspector may enter, at any reasonable time, any licensee's premises where manufactured homes are manufactured and inspect any documents and records required to be maintained under the act and these regulations.

B. An inspector may enter, at any reasonable time, any licensee's premises where manufactured homes are sold, or offered for sale, and inspect any purchase agreement or sales contract pertaining to a sales transaction.

C. An inspector may enter any licensee's location during normal working hours to inspect new or pre-owned manufactured homes for compliance with the act and these regulations.

D. An inspector shall, upon discovery of license violations or other violations which may constitute an immediate danger to the health and safety of a consumer, issue a notice of violation to the licensee describing the violation. A manufactured home, which contains violations, shall be conspicuously tagged with a "Prohibited Sales Notice".

E. Upon notification from the licensee that license violations or other violations in a manufactured home have been corrected, and upon inspection and verification of appropriate correction, including payment of the inspection fee for removal of a "Prohibited Sales Notice" by the division, the division shall authorize the removal of the "Prohibited Sales Notice".

F. The division may grant written approval to transfer locations of any manufactured home bearing a "Prohibited Sales Notice" upon receipt of a written request from the licensee or owner indicating the purpose of the relocation and the relocation address.

G. Any inspector may order or cause the immediate discontinuance of natural gas, LP gas, electrical or other service to a manufactured home determined to be dangerous to life or property because of any defect, faulty design, incorrect installation or other deficiency in any manufactured home or component, appliance, part or service equipment in a manufactured home, connected to a manufactured home or provided for service to the manufactured home.

(1) The inspector shall notify the homeowner or current occupant of the discontinuance of service or intention to discontinue service and shall also notify the public utility or other entity providing the service.

(2) The inspector may order the correction of any defect or incorrect installation and shall issue a notice to the owner or current occupant of the manufactured home outlining the corrections to be made in order to meet the requirements of these regulations and the H.U.D. standards.

(3) If the defects or incorrect installation are caused by a licensee of the division, the inspector shall issue a notice to such licensee outlining the corrections to be made in order to meet the requirements of these regulations and the H.U.D. standards. The inspector shall order the licensee to make such corrections within a specified period of time. The licensee shall notify the inspector of the completion of the corrections in order that they may be inspected. The licensee shall perform any additional corrections ordered by the inspector if the inspected corrections are insufficient to correct the defects. Failure by a licensee to comply with any order of an inspector under this regulation shall be grounds for disciplinary action.

(4) The inspector shall attach a notice to the manufactured home, which shall state that the particular service to the home has been discontinued by order of the inspector and shall detail the reasons for the discontinuance.

(5) Service to the manufactured home shall not be restored until authorized by the inspector after all necessary corrections have been made.

H. All manufactured homes that have been re-manufactured or reconstructed must be permitted and inspected before being offered for sale. All utilities in the home must pass the tests as outlined in the Federal Manufactured Housing Construction and Safety Standards.

I. The division has the right jointly with the appropriate utility company to condemn a manufactured home that is found to be a fire hazard, or which constitutes a hazard to health and safety of a person residing in the state of New Mexico.

J. If the division finds a licensee or its qualifying party to be in violation of this regulation, the licensee must correct the violation at its own expense to the satisfaction of the division.

[14.12.9.11 NMAC - Rp, 14.12.2.38 NMAC, 12-01-10]

14.12.9.12 REQUESTED INSPECTIONS: A request for inspection, of a manufactured home, may be made by HUD or by an SAA, any licensee, financial institution or manufactured home homeowner, in which they have a substantial interest.

[14.12.9.12 NMAC - Rp, 14.12.2.39 NMAC, 12-01-10]

14.12.9.13 INSTALLATION INSPECTIONS:

A. The division shall inspect each installation of a manufactured home.

B. The division shall issue a notice of violation whenever a manufactured home contains a violation of the installation requirements pursuant to regulations. The notice shall include a description of each violation.

C. Upon correction of any violation a re-inspection of the manufactured home shall be requested.

D. Upon receipt of an inspection request, the division shall inspect the manufactured home and shall post notice of any continuing violation.

E. Mechanical, electrical and general construction contractors licensed with the construction industries division and who perform work on manufactured homes are not required to hold a license with the manufactured housing division. However, they must be registered with the manufactured housing division. The registration form shall show the name of the license holder, business address, mailing address, type of license issued by the construction industries division, expiration date of license, and the name of the qualifying party. Registrants must pay any required fee and must post a consumer protection bond with the division.

F. All materials used in the installation of all manufactured homes shall be listed materials or have prior written approval of the division.

[14.12.9.13 NMAC - Rp, 14.12.2.40 NMAC, 12-01-10]

14.12.9.14 INSPECTION PERMITS:

A. No manufactured home shall be installed in New Mexico unless the dealer, installer, or homeowner, if authorized, has obtained an installation permit or a combined installation and permanent foundation inspection permit from the division.

B. Installation inspection permits shall include the name and license number of each licensee performing installation work and the consumer's name and address. Names and license numbers of licensee shall be included on the permit at the time of final inspection. Incomplete or inaccurate permits shall be considered an inspection failure and will be subject to re-inspection. When the consumer's address is a post office box or rural route, a map showing the current location shall be included. Unlicensed homeowners performing work on their own principal residential property must perform all the work themselves, or must employ or contract division approved licensees, to perform said work. The unlicensed homeowner shall execute a document, prepared by the division, acknowledging their understanding and expertise, pursuant to federal and New Mexico installation rules, regulations, standards, including the manufacturer's installation and site

engineering requirements; and, shall assume all legal liability for any work performed, or under the supervision or contract of said homeowner. The unlicensed homeowner shall assume all responsible for compliance with all local and state requirements, codes and inspection requirements.

C. Installation inspection permits shall be returned to the division in accordance with the instructions on the permit. Upon final inspection, inspectors shall certify on the permit, or upon any inspection report, that the manufactured home meets the minimum standards for use and occupancy provided for by the act and these regulations.

D. Permits are valid one hundred eighty (180) days from the date of issuance. A time extension may be granted by the division for delay occasioned by weather conditions or with inspections involving a home that is being re-manufactured or installed on a permanent foundation.

E. An installation permit must be issued with each new or pre-owned manufactured home to be installed in the state of New Mexico.

F. Upon a written request the division may issue a $15.00 permit for any alteration, modification or repair of a manufactured home or any component part of a manufactured home except warranty work, which is performed under a previous permit and installation.

G. Any system or structural modification work done under the manufacturer II license must be permitted and inspected.

H. If a manufactured home installation is made without a permit, the homeowner, dealer or installer will be subject to a fine of a double permit fee.

I. The division may assess a re-inspection fee against any person found to be in violation of this regulation.

J. Upon a written request the division may issue a $15.00 permit for an existing installation when the home is converting from LP Gas to natural gas or natural gas to LP gas.

K. Permit must be affixed to the window closest to the front exterior door in a weather resistant container. The container shall be affixed to the exterior of the window for access to all licensee's and division inspection.

L. The use of digital, electronic or hard copy photographs prior to pouring concrete in foundation related work may be permitted when the installer, to include individuals granted licensures in accordance with 14.12.2.14 NMAC adhere to the following.

(1) The images shall render site specific landmarks in which the inspector is able to identify said work with relation to subject site. These land marks may be mountains, hills, surrounding parcel improvements or other subjects that link the subject site to the landmark.

(2) The images render specific placement of required rebar, thickness and size of forms and placement of anchors within concrete. The installer or contractor shall make every effort to display the subject site in the best possible manner.

(3) The installer or contractor may not proceed or conduct said concrete associated work without the prior approval of the division inspector.

[14.12.9.14 NMAC - Rp, 14.12.2.41 NMAC, 12-01-10]

HISTORY of 14.12.9 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

CIC 70-5, 1969 Standards for Mobile Homes, filed 09-02-70

CIC MB 70-9, Standard for Mobile Homes for New Mexico, filed 10-23-70

CIC 71-5, 1971 Mechanical Mobile Home Code for New Mexico, filed 09-16-71

CIC 72-3, 1972 Standards for Mobile Homes, filed 08-18-72

CIC 73-1, 1973 Standards for Mobile Homes, filed 10-30-73

CIC MHB 75-4, 1975 Standard for Mobile Home Regulations pertaining to Manufacturers, Dealers, and Installers, filed 10-08-75

CIC MHB 77-7, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers, and Repairmen, filed 04-02-77

MHD 77-1, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers and Repairmen, filed 04-26-77

MHD 81-1, Mobile Housing Division Regulations, filed 05-27-81

MHD 83-1, Manufactured Housing Division Regulations, filed 08-18-83

MHD 85-1, Manufactured Housing Division Regulations, filed 02-01-85

MHD 88-1, Manufactured Housing Division Regulations, filed 08-09-88

MHD 90-1, Manufactured Housing Division Regulations, filed 12-08-89

History of Repealed Material:

14 NMAC 12.2, Manufactured Housing Requirements (filed 9-16-97) repealed 12-01-1998.

14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) repealed 6-01-1999.

14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) repealed 9-14-2000.

14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) repealed 12-01-2010.

Other History:

MHD 90-1, Manufactured Housing Division Regulations (filed 12-08-89) was renumbered, reformatted, amended and replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 12-01-1998.

14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) was replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 6-01-1999.

14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) was replaced by 14.12.2 NMAC, Manufactured Housing Requirements, effective 9-14-2000.

Those applicable portions of 14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) were replaced by 14.12.9 NMAC, Inspections, effective 12-01-2010.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT

MANUFACTURED HOUSING DIVISION

TITLE 14 HOUSING AND CONSTRUCTION

CHAPTER 12 MANUFACTURED HOUSING

PART 10 FEES

14.12.10.1 ISSUING AGENCY: The Manufactured Housing Division of the Regulation and Licensing Department.

[14.12.10.1 NMAC - Rp, 14.12.2.1 NMAC, 12-01-10]

14.12.10.2 SCOPE: These rules and regulations apply to all manufacturers, dealers, brokers, salesman, installers, repairman, contractors, and purchasers of manufactured homes in the state of New Mexico.

[14.12.10.2 NMAC - Rp, 14.12.2.2 NMAC, 12-01-10]

14.12.10.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Manufactured Housing Act, Sections 60-14-1 through 60-14-20 NMSA 1978.

[14.12.10.3 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.10.4 DURATION: Permanent.

[14.12.10.4 NMAC - Rp, 14.12.2.4 NMAC, 12-01-10]

14.12.10.5 EFFECTIVE DATE: 12-01-10 unless a later date is cited at the end of a section.

[14.12.10.5 NMAC - Rp, 14.12.2.5 NMAC, 12-01-10]

14.12.10.6 OBJECTIVE: The objective of 14.12.10 NMAC is to set forth fees for the manufactured housing division.
[14.12.10.6 NMAC - Rp, 14.12.2.6 NMAC, 12-01-10]

14.12.10.7 DEFINITIONS: [RESERVED]
[Refer to 14.12.1.7 NMAC]

14.12.10.8 FEES:

A. Fees shall not be refunded, except that upon written request, the director shall have the discretion to refund any fees.

B. Examination fee is fifty dollars ($50.00).

C. Annual license fees.

(1) Manufacturer I: five hundred dollars ($500.00).

(2) Manufacturer II-re-furbisher: four hundred dollars ($400.00).

(3) Dealer: two hundred dollars ($200.00).

(4) Installer and repairman: two hundred dollars ($200.00).

(5) Salesperson: fifty dollars ($50.00).

(6) Broker: two hundred dollars ($200.00).

(7) Associate broker: fifty dollars ($50.00).

D. Inspection or re-inspection fee(s): sixty five dollars ($65.00).

E. Permits: sixty five dollars ($65.00). The permit will be for the installation, permanent foundation and utility connections.

F. Transfer of salesperson's license: twenty-five dollars ($25.00).

G. Re-issuance of qualifying party certificate from one business to another: twenty-five dollars ($25.00).

H. Manufacturer II-re-furbisher inspection permit: one hundred and twenty dollars ($120.00).

I. Contractors and journeyman licensed by the construction industries division performing work on manufactured homes shall be registered with the manufactured housing division (MHD) and pay an annual registration fee of one hundred dollars ($100.00) per licensee and post with MHD an installer's or repairman's consumer protection bond, pursuant to 14.12.4.13 NMAC.

J. Addition of a qualifying party to an existing license: twenty-five dollars ($25.00).

K. Bad or returned checks:

(1) An additional charge of $20.00 shall be made for any check, which fails to clear or is returned for any reason.

(2) Such returned checks shall cause any license issued, renewed or test scheduled as the result of such payment to be immediately suspended until proper payment in full is received.

L. Consumer complaint inspections: sixty five dollars ($65.00) for each inspection. Inspections shall be paid by the installer/repairman, dealer, manufacturer or broker, as appropriate.

M. Pre-owned label: forty dollars ($40.00).

N. Change of a licensee's name, address or license status: twenty-five dollars ($25.00).

O. Inspection fee for removal of a "Prohibited Sales Notice" by the division: sixty dollars ($60.00).

P. Requested inspection: sixty five dollars ($65.00).

Q. Manufacturer's supervision or compliance monitoring, pursuant to an amount approved by HUD.

R. Alteration, modification, or repair fee: fifteen dollars ($15.00).

S. Conversion fee: fifteen dollars ($15.00).
[14.12.10.8 NMAC - Rp, 14.12.2.25 NMAC, 12-01-10]

HISTORY of 14.12.10 NMAC:
Pre-NMAC History:
Material in the part was derived from that previously filed with the commission of public records - state records center and archives:
CIC 70-5, 1969 Standards for Mobile Homes, filed 09-02-70
CIC MB 70-9, Standard for Mobile Homes for New Mexico, filed 10-23-70
CIC 71-5, 1971 Mechanical Mobile Home Code for New Mexico, filed 09-16-71
CIC 72-3, 1972 Standards for Mobile Homes, filed 08-18-72
CIC 73-1, 1973 Standards for Mobile Homes, filed 10-30-73
CIC MHB 75-4, 1975 Standard for Mobile Home Regulations pertaining to Manufacturers, Dealers, and Installers, filed 10-08-75
CIC MHB 77-7, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers, and Repairmen, filed 04-02-77
MHD 77-1, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers and Repairmen, filed 04-26-77
MHD 81-1, Mobile Housing Division Regulations, filed 05-27-81
MHD 83-1, Manufactured Housing Division Regulations, filed 08-18-83
MHD 85-1, Manufactured Housing Division Regulations, filed 02-01-85
MHD 88-1, Manufactured Housing Division Regulations, filed 08-09-88
MHD 90-1, Manufactured Housing Division Regulations, filed 12-08-89

History of Repealed Material:
14 NMAC 12.2, Manufactured Housing Requirements (filed 9-16-97) repealed 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) repealed 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) repealed 9-14-2000.
14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) repealed 12-01-2010.

Other History:
MHD 90-1, Manufactured Housing Division Regulations (filed 12-08-89) was renumbered, reformatted, amended and replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) was replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) was replaced by 14.12.2 NMAC, Manufactured Housing Requirements, effective 9-14-2000.
Those applicable portions of 14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) were replaced by 14.12.10 NMAC, Fees, effective 12-01-2010.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
MANUFACTURED HOUSING DIVISION

TITLE 14 HOUSING AND CONSTRUCTION
CHAPTER 12 MANUFACTURED HOUSING
PART 11 DISCIPLINE

14.12.11.1 ISSUING AGENCY: The Manufactured Housing Division of the Regulation and Licensing Department.
[14.12.11.1 NMAC - Rp, 14.12.2.1 NMAC, 12-01-10]

14.12.11.2 SCOPE: These rules and regulations apply to all licensed manufacturers, dealers, brokers, salesman, installers, repairman, and contractors, and unlicensed manufacturers, dealers, brokers, salesman, installers, repairman, and contractors required by the Manufactured Housing Act to be licensed by the manufactured housing division.
[14.12.11.2 NMAC - Rp, 14.12.2.2 NMAC, 12-01-10]

14.12.11.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Manufactured Housing Act, Sections 60-14-1 through 60-14-20 NMSA 1978.

[14.12.11.3 NMAC - Rp, 14.12.2.3 NMAC, 12-01-10]

14.12.11.4 DURATION: Permanent.
[14.12.11.4 NMAC - Rp, 14.12.2.4 NMAC, 12-01-10]

14.12.11.5 EFFECTIVE DATE: 12-01-10 unless a later date is cited at the end of a section.
[14.12.11.5 NMAC - Rp, 14.12.2.5 NMAC, 12-01-10]

14.12.11.6 OBJECTIVE: The objective of 14.12.11 NMAC is to set forth the disciplinary process for licensees under the Manufactured Housing Act and division rules.
[14.12.11.6 NMAC - Rp, 14.12.2.6 NMAC, 12-01-10]

14.12.11.7 DEFINITIONS: [RESERVED]
[Refer to 14.12.1.7 NMAC]

14.12.11.8 COMPLAINTS AND HEARINGS:

A. A person claiming to be injured by an alleged violation of the Act or these regulations or by reason of any other cause set forth in Section 60-14-6, N.M.S.A. 1978, may file with the division a written complaint which shall state the name and address of the licensee against whom the complaint is made and shall include a concise statement of the alleged violation. If it is determined by the division that the complaint is insufficient or defective, the complainant shall be promptly notified and permitted to amend the complaint.

B. Upon receipt of a written complaint, the division shall investigate by telephone or by personal contacts within thirty (30) days of receipt of the complaint the alleged violation to determine whether cause exists to investigate further. If such cause exists, an on-site inspection will be made within thirty (30) days of such determination. The consumer shall make himself available during reasonable business hours within the prescribed thirty (30) days.

(1) The division shall contact the licensee by mail and request correction of the violations within forty (40) day's of receipt of the complaint. The letter may also request investigation according to Subpart I of the Federal Manufactured Home Construction and Safety Standards, Federal Procedural and Enforcement Regulations, which require investigation of class or re-occurrences of non-conformances to the Federal Standards.

(2) Following this initial forty (40) day period, if it is determined that there is no cause for the complaint, the complaint shall be dismissed. The division shall also place all information in their consumer complaint files for five years after closing of the case. This information shall include (a) the determination; (b) who made the determination; and (c) how the determination was made.

(3) If the committee determines that there is cause for the complaint, the division shall attempt to achieve a satisfactory resolution of the complaint through correspondence or informal conference. All resolutions are pending final approval of the committee.

(4) If the committee determines that the items requested to be corrected by the complainant are the responsibility of the manufacturer, and that these items are required to be corrected under the federal regulations, the manufacturer will be requested to submit a notification and correction plan to the director of the manufactured housing division within twenty (20 days of receipt of the letter and as required under Subpart I of the federal regulations. If, within twenty (20) days and there does not seem to be a reoccurrence of the same deficiencies, no formal plan needs to be submitted if the division has granted waiver to the plan. If a plan is submitted to the division, the division shall approve or modify the plan and send it back to the manufacturer for remedial action. The plan shall include, but not be limited to, a list of manufactured homes affected, method of correction, content of notification notice to consumer and the requirements as detailed under Subpart I of the federal regulations. The manufacturer shall have sixty (60) days to notify and correct and an additional thirty (30) days to submit closeout reports of all action taken by the manufacturer in the case.

C. If the complaint is not completely resolved by the foregoing method, the committee may proceed with formal disciplinary action in accordance with the Uniform Licensing Act, Sections 61-1-1, et seq., N.M.S.A. 1978, as amended, and the division may conduct further inspections or investigations.

D. The division will charge a re-inspection fee each time a re-inspection is performed on a home that is involved in a consumer complaint. Those consumer complaints that the division investigates that are dismissed by the committee, no fee will be charged. The fee shall be charged to the dealer, manufacturer, installer/repairman, or broker as appropriate.
[14.12.11.8 NMAC - Rp, 14.12.2.42 NMAC, 12-01-10]

14.12.11.9 SUSPENSION AND REVOCATION:

A. Hearings on suspensions or revocations of licenses on grounds enumerated in the Act and these regulations shall be conducted in accordance with the Uniform Licensing Act. (Section 61-1-1 et seq., NMSA 1978, as amended.).

B. Following a committee action to suspend or revoke a licensee's license, all homes must be tagged with a "Prohibited Sales Notice." The inspection fee for the removal of a "Prohibited Sales Notice" by the division shall be sixty dollars ($60.00), except when waived by the director of the division.

C. Any person that has had their license suspended or revoked or bond attached that acted as the qualifying party cannot be re-licensed until all outstanding complaints are final and closed. They must also post a consumer protection bond with the division in the amount of $100,000.00. They cannot be an employee of any licensee of the manufactured housing division until all complaints are final and closed.
[14.12.11.9 NMAC - Rp, 14.12.2.43 NMAC, 12-01-10]

14.12.11.10 UNLICENSED ACTIVITY: When a person or business entity conducts business in any area requiring licensure, he/she must cease all activities until he/she is licensed and complies with all provisions of the act and these regulations. Failure to cease all activity by a person or business entity will subject such person or business entity to all penalties pursuant to the act and these regulations.
[14.12.11.10 NMAC - Rp, 14.12.2.64 NMAC, 12-01-10]

14.12.11.11 LICENSES VOIDED OR CANCELED BY OPERATION OF LAW:

A. When a license has been suspended, canceled, has not been renewed during the 30 day grace period, or is otherwise voided by operation of law, the licensee cannot work until he/she receives a new license, or until his/her license is properly reinstated as active, pursuant to the requirements of the act and these regulations.

B. Any licensee working while his/her license has been suspended, canceled, has not been renewed during the 30 day grace period, or otherwise voided by operation of law shall be guilty of unlicensed activity. Such, a licensee must resolve any and all unlicensed activity charges pursuant to the requirements of the act and these regulations before obtaining a new license, or renewing, or otherwise reactivating his/her license or certificate of competence.
[14.12.11.11 NMAC - Rp, 14.12.2.65 NMAC, 12-01-10]

HISTORY of 14.12.11 NMAC:
Pre-NMAC History:
Material in the part was derived from that previously filed with the commission of public records - state records center and archives:
CIC 70-5, 1969 Standards for Mobile

Homes, filed 09-02-70
CIC MB 70-9, Standard for Mobile Homes for New Mexico, filed 10-23-70
CIC 71-5, 1971 Mechanical Mobile Home Code for New Mexico, filed 09-16-71
CIC 72-3, 1972 Standards for Mobile Homes, filed 08-18-72
CIC 73-1, 1973 Standards for Mobile Homes, filed 10-30-73
CIC MHB 75-4, 1975 Standard for Mobile Home Regulations pertaining to Manufacturers, Dealers, and Installers, filed 10-08-75
CIC MHB 77-7, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers, and Repairmen, filed 04-02-77
MHD 77-1, Regulations pertaining to Manufacturers, Dealers, Brokers, Salesmen, Installers and Repairmen, filed 04-26-77
MHD 81-1, Mobile Housing Division Regulations, filed 05-27-81
MHD 83-1, Manufactured Housing Division Regulations, filed 08-18-83
MHD 85-1, Manufactured Housing Division Regulations, filed 02-01-85
MHD 88-1, Manufactured Housing Division Regulations, filed 08-09-88
MHD 90-1, Manufactured Housing Division Regulations, filed 12-08-89

History of Repealed Material:
14 NMAC 12.2, Manufactured Housing Requirements (filed 9-16-97) repealed 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) repealed 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) repealed 9-14-2000.
14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) repealed 12-01-2010.

Other History:
MHD 90-1, Manufactured Housing Division Regulations (filed 12-08-89) was renumbered, reformatted, amended and replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 12-01-1998.
14 NMAC 12.2, Manufactured Housing Requirements (filed 10-14-98) was replaced by 14 NMAC 12.2, Manufactured Housing Requirements, effective 6-01-1999.
14 NMAC 12.2, Manufactured Housing Requirements (filed 4-14-99) was replaced by 14.12.2 NMAC, Manufactured Housing Requirements, effective 9-14-2000.
Those applicable portions of 14.12.2 NMAC, Manufactured Housing Requirements (filed 8-01-00) were replaced by 14.12.11 NMAC, Discipline, effective 12-01-2010.

NEW MEXICO SECRETARY OF STATE

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS
PART 33 VOTE TOTALS BY PRECINCT

1.10.33.1 ISSUING AGENCY: Office of the Secretary of State
[1.10.33.1 NMAC - N/E, 10-15-10]

1.10.33.2 SCOPE: This rule applies to any special statewide election, general election, primary election, countywide election or elections to fill vacancies in the office of United States representative.
[1.10.33.2 NMAC - N/E, 10-15-10]

1.10.33.3 STATUTORY AUTHORITY: Election Code, Section 1-2-1 NMSA 1978; Section 1-12-70, NMSA 1978.
[1.10.33.3 NMAC - N/E, 10-15-10]

1.10.33.4 DURATION: Permanent.
[1.10.33.4 NMAC - N/E, 10-15-10]

1.10.33.5 EFFECTIVE DATE: October 15, 2010 unless a later date is cited at the end of a section.
[1.10.33.5 NMAC - N/E, 10-15-10]

1.10.33.6 OBJECTIVE: The purpose of this rule is to provide procedures to secure the secrecy of the ballot when reporting early and absentee vote totals by precinct pursuant to the constitution of New Mexico, Article VII, Section 1 and Section 1-12-70 NMSA 1978.
[1.10.33.6 NMAC - N/E, 10-15-10]

1.10.33.7 DEFINITIONS:

A. "Absentee ballot" means a method of voting by ballot, accomplished by a voter who is absent from the voter's polling place on election day.

B. "Ballot" means a paper ballot card that is tabulated on an optical scan vote tabulating system or hand tallied.

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

D. "Election" means any special statewide election, general election, primary election or special election to fill vacancies in the office of United States representative.

E. "Precinct" means a contiguous and compact electoral area having clearly definable boundaries and complying with the Precinct Boundary Adjustment Act.

F. "Voter" means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provisions of the Election Code of the state of New Mexico.
[1.10.33.7 NMAC - N/E, 10-15-10]

1.10.33.8 SECRETARY OF STATE AND COUNTY CLERK PROCEDURES:

A. The secretary of state shall notify the county clerks to report the results on election night as a total vote for each candidate or question by precinct, and not by the method voters have cast their ballots.

B. Following completion of the county canvass, the county clerks shall report to the secretary of state the voting data by precinct as required by Section 1-12-70, NMSA 1978. This data is not a public record and shall not be released to any other person.

C. The secretary of state shall compile the voting data by precinct, as follows:

(1) in any precinct where fewer than 10 voters voted by absentee ballot or as early voters, the total votes in that precinct shall be reported as a single total, and not by the type of method by which voters cast their ballot;

(2) in any precinct where fewer than 10 voters vote on election day, all vote totals in that precinct shall be combined with those of an adjacent precinct that shares the same voting districts;

(3) in any precinct not described in Paragraph (1) or (2) of this subsection, the voting totals for each precinct may be reported by the type of method by which voters cast their ballot.

D. The secretary of state shall not release the canvass of the election, and it shall not be a public record, until vote totals compromising the secrecy of any individual voter's ballot have been combined in accordance with Subsection C of this section so as to make the voter's ballot choices impossible to determine.
[1.10.33.8 NMAC - N/E, 10-15-10]

History of 1.10.33 NMAC: [RESERVED]

NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to 1.10.23 NMAC, Sections 8, 9, and 10, effective October 15, 2010.

1.10.23.8 PUBLIC NOTICE AND OBSERVATION OF AUDITS, VOTING SYSTEM CHECKS, RECHECKS AND RECOUNTS:

A. Public notice. In addition to the notice required to be provided by Section 1-14-16 NMSA 1978 for rechecks and recounts, at least three (3) days prior to an audit, voting system check, recount or recheck, the county clerk shall post, in at least one conspicuous place in the county, the time and location of the audit, voting system check, recount or recheck. In addition, if the county clerk has a web site, at least three (3) days prior to an audit, voting system check, recount or recheck, the county clerk shall post the time and location [~~of the audit, recount or recheck~~] on its web site.

B. Public observation. Consistent with Subsection A of Section [~~1-14-13.1~~] 1-14-13.2 NMSA 1978, county canvass observers may be present during the audit process and shall be subject to Section 1-2-31 NMSA 1978. Pursuant to Section 1-14-16 NMSA 1978, members of the public may be present during a recheck or recount. The county clerk shall provide instructions to all observers, watchers and members of the public regarding any rules governing their conduct during an audit, voting system check, recheck, or recount. At all times during an audit[~~, recheck, or recount,~~] process, those present to observe shall wear self-made badges designating themselves as an authorized observer of the organization or candidate which they represent or as a member of the public. Those present to observe [~~an audit, recheck, or recount~~] shall not:

(1) wear any identification other than the badge described above;

(2) wear any party or candidate pins;

(3) perform any duty of the recount, recheck, or audit workers;

(4) handle any election material;

(5) interfere with the orderly conduct of workers conducting the process; or

(6) use cell phones, audio, or video tape equipment while observing the process. [1.10.23.8 NMAC - N/E, 10-2-08; A/E, 10-15-10]

1.10.23.9 [~~"TWO PERCENT" AUDIT PROCEDURES:~~ ~~This section applies to audits of gubernatorial and presidential races in a general election, as required by Section 1-14-13.1 NMSA 1978.~~

~~**A. Simple random sampling of voting systems required for audit.** In selecting the voting systems to be used in an audit, the secretary of state shall obtain a random sample of two percent (2%) of voting systems from each county in accordance with the procedures in this subsection.~~

~~**(1)** By no later than 1:00 P.M. on the Monday immediately following election day, the secretary of state shall select the voting systems to be audited. The serial number of each voting system used prior to or on election day shall be placed on a separate piece of paper and the papers with the serial numbers shall be placed in a separate container for each county. The secretary of state shall pull voting system numbers at random from each container until two percent (2%) of voting systems from each county are drawn. If two percent (2%) of all voting systems in a county is less than one voting system, the secretary of state shall draw one voting system for that county.~~

~~**(2)** By no later than 1:00 P.M. on the Tuesday immediately following election day, the secretary of state shall notify the county clerks of the serial numbers of the voting systems that have been selected for auditing.~~

~~**(3)** The random sampling process shall be open to public observation. At least seven (7) days prior to the random sampling conducted pursuant to this subsection, the secretary of state shall post notice on its web site of the time, date, and location of the random sampling.~~

~~**B. Time and place; ballot security.**~~

~~**(1)** The county clerk shall choose a location for the audit that is accessible to the public.~~

~~**(2)** The county clerk shall arrange for transportation of ballots to the audit site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the audit site.~~

~~**(3)** Prior to conducting the audit, the county clerk shall seek an order from the district judge permitting the county clerk to open those ballot boxes containing ballots from the voting systems selected for auditing.~~

~~**(4)** The county clerk shall assign counting teams of at least two members to particular voting systems. The team shall consist of one reader and one marker, not of the same political party whenever feasible.~~

~~**(5)** At least one person in addition to the county clerk shall witness all movement of ballots during the audit, and all movement of ballots from and to the ballot box during the audit process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.~~

~~**C. Hand counting procedures for audits.** The ballots from the voting systems selected for auditing shall be hand tallied pursuant to the procedures in this subsection. The secretary of state shall provide tally sheets for only those races being tallied as part of the audit, and shall include options for marking undervotes and overvotes.~~

~~**(1)** The counting team shall ensure that the serial number for the voting system and the type of ballot to be counted are prominently displayed on the tally sheet.~~

~~**(2)** To count the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the recount of a voting system or portion of a voting system, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.~~

~~**(3)** If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.~~

~~**D. Audit reconciliation procedures.**~~

~~**(1)** Immediately upon the conclusion of the audit, the county clerk shall compare the results of the machine count with the results of the hand tally, provide the results to the secretary of state in writing, and make the results available to the public. The secretary of state shall combine the county files and place the results on the secretary of state's website.~~

~~**(2)** The secretary of state shall determine whether a recount is required pursuant to Subsection B of Section 1-14-13.1 NMSA 1978, and within five (5) days of the completion of the state canvass, file notice with the appropriate canvassing board(s) that a recount is required. In the notice, the secretary of state shall specify the office and precincts that shall be recounted. When a recount is required by Section 1-14-13.1 NMSA 1978, a recount shall be made in all precincts of the legislative district in which the discrepancy occurred.~~

~~**(3)** All recounts required pursuant to Subsection B of Section 1-14-13.1 NMSA 1978 shall be conducted pursuant to 1.10.23.10 NMAC.~~]

VOTING SYSTEM CHECK PROCEDURES: This section applies to voting system checks for all federal offices, for governor, and for the statewide elective office other than the office of the governor for which the winning candidate won by the smallest percentage margin of all candidates for statewide office in New Mexico, as required by Section 1-14-13.2 NMSA 1978.

A. Auditor functions

(1) Selection of precincts for the voting system check. The number of precincts to be selected for each contest shall be based on the margin between the top two candidates as determined in Table 1 of Section 1-14-13.2 NMSA 1978. (The calculations for determining the number of precincts in the sample assume that the maximum margin shift in any precinct will not exceed 30%. Achieving the 90% probability of detection with the number of precincts in the sample as indicated in Table 1 requires that the probability of selecting a precinct is proportional to the precinct size.)

(a) By no later than 12 calendar days after the election, the auditor shall select the precincts for the voting system check pursuant to the precinct selection process set forth in Section 1-14-13.2 NMSA 1978.

(b) The auditor will conduct an agreed upon procedures engagement in accordance with AICPA statements on standards for attestation engagements for procedures set forth in Section 1-14-13.2 NMSA 1978 and 1.10.23.9 NMAC.

(c) Precincts will be randomly selected using a process that is visually observable, such as rolling dice or selecting pieces of paper from a box, with the probability of selection being proportional to the number of persons registered to vote in the last election in each precinct.

(d) The random sampling process shall be open to public observation. At least seven days prior to the random sampling conducted pursuant to this subsection, the secretary of state shall post notice on its web site of the time, date, and location of the random sampling.

(2) Notification of the county clerks: By no later than 13 days after the election the auditor shall notify the county clerks of the precincts that have been selected for the voting system check.

(a) The auditor shall provide the county clerks with tally sheets for the offices to be subjected to voting systsem checks in the selected precincts.

(b) The auditor shall reference rules and guidelines that have been provided in advance by the secretary of state for conducting the hand counts and reporting the results to the auditor.

(3) Analysis of results: The auditor shall compare the hand count results with the vote tabulator results to determine if further sampling or a full hand count is needed for any office being subjected to the voting system check.

(a) The auditor determines within 26 days after the election if further sampling is required. The determination is made by 1) calculating the difference between the vote tabulator counts divided by the votes cast for the office in the sample as reported by the vote tabulators and the hand counts divided by the votes cast for the office in the sample as reported by the hand counts for the putative first place candidate, 2) calculating the difference between the vote tabulator counts divided by the votes cast for the office in the sample as reported by the vote tabulators and the hand counts divided by the votes cast for the office in the sample as reported by the hand counts for the putative second place candidate, and 3) subtracting the result in 2) for the putative second place candidate from the result in 1) for the putative first place candidate. For any office being subjected to the voting system check, if the result in 3 exceeds 90% of the reported margin between the first and second place candidates, a voting system check must be conducted on an additional sample of the same size as the original sample. The procedures in subsection A are repeated for selecting the additional sample and notifying the county clerks. If the result in 3) does not exceed 90% of the reported margin between the first and second place candidates, the auditor reports to the secretary of state that no further checking of voting systems for that office pursuant to Section 1-14-13.2 NMSA 1978 is required.

(b) If a second sample was required, the auditor determines within 39 days after the election if a full hand count is required. The determination is made by 1) calculating the difference between the vote tabulator counts divided by the votes cast for the office in both samples as reported by the vote tabulators and the hand counts divided by the votes cast for the office in both samples as reported by the hand counts for the putative first place candidate, 2) calculating the difference between the vote tabulator counts divided by the votes cast for the office in both samples as reported by the vote tabulators and the hand counts divided by the votes cast for the office in both samples as reported by the hand counts for the putative second place candidate, and 3) subtracting the result in 2) for the putative second place candidate from the result in 1) for the putative first place candidate. For any office being subjected to the voting system check, if the result in 3) exceeds 90% of the reported margin between the first and second place candidates, a full hand count of all precincts must be conducted for the contest. If the result in 3) does not exceed 90% of the reported margin between the first and second place candidates, the auditor reports to the secretary of state that no further checking of voting systems for that office pursuant to Section 1-14-13.2 NMSA 1978 is required.

(4) Reporting results: The auditor shall, within three days of receiving the hand counting results from the county clerks for the initial sample, an additional sample, if applicable, and a full hand recount, if applicable, submit a report to the secretary of state and to the public that shall include, for each office subject to the voting system check, the numbers and names of the precincts in the initial sample and, if applicable, the second sample for each office; the outcome of full recounts, if conducted; a comparison of the vote tabulator results with the hand counts in each precinct in the samples and the full recount, if conducted; a comparison of the vote tabulator results with the hand counts for all precincts; a comparison of the reported margin between the first and second place candidates with the error rates in the first sample and, if applicable, in both samples and for a full recount, if conducted. Within 30 days of receiving the hand counting results from the county clerks, a final report to the secretary of state and to the public shall also include a description of the procedures used for the voting system check.

B. Secretary of state functions: The secretary of state shall contract with an auditor whose firm name appears on the state auditor's list of independent public accountants approved to perform audits of New Mexico government agencies.

(1) Within 28 days of the closing of voter registration, the secretary of state shall provide the auditor with the number of registered voters in each precinct in the state.

(2) Upon receipt of the county canvass results and no later than 10 days after the date of the election, the secretary of state shall provide the auditor with the voting results from each county to be used to determine the size of the random sample of precincts for the voting system check.

(3) The secretary of state shall provide a venue and the necessary supplies and equipment for use by the auditor in publicly selecting precincts for each office subject to the voting system check.

(4) The secretary of state shall provide the auditor with the forms or templates to be used by the county clerks and by the auditor for recording, reporting and analyzing results of the voting system check. These forms or templates may include those used for notifying county clerks of the precincts selected for each office, for tallying hand counts, for reporting hand count results to the auditor, for analyzing results of the voting system check by the auditor, and for reporting results of the voting system check to the secretary of state and state canvassing board. The secretary of state shall provide tally sheets to the auditor for only those

precincts and offices being tallied as part of the voting system check.

(5) The secretary of state shall arrange for the communications channels and terminals to be used by the auditor for communications of information related to the voting system check to and from the county clerks.

(6) The secretary of state shall provide guidelines to the county clerks for conducting the hand counts and reporting the results to the auditor.

(7) The secretary of state shall post on the web the intermediate and final results reported by the auditor as soon as they are available.

C. County clerk functions

(1) Early voting, absentee voting and election day voting ballots counted by vote tabulators by the time of closing of the polls on election night will be subject to the voting system check. Therefore, it is recommended that sorting of these ballots by precinct should be done in advance.

(a) Within 10 days of the notice to conduct the voting system check, the county clerk shall report their results to the auditor.

(b) The county clerk shall choose a location for the voting system check that is accessible to the public.

(c) The county clerk or her designee shall arrange for transportation of ballots to the site of the voting system check and contact the sheriff or state police to move the ballot boxes from the current place of storage to the site of the voting system check.

(d) At least one person in addition to the county clerk shall witness all movement of ballots during the voting system check, and all movement of ballots from and to the ballot box during the voting system check shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted and the identity of the witness shall be documented.

(e) Prior to conducting the voting system check, the county clerk shall seek an order from the district judge permitting the county clerk to open those ballot boxes containing ballots from the precincts selected for the voting system check.

(f) The county clerk shall assign counting teams of at least two members (a reader and a marker) and preferably three, to particular precincts. The third member, if present, verifies that what the reader reads is correct and is what the marker marks. The team members shall consist of at least two distinct political parties, if possible.

(2) Hand counting procedures. The ballots from the precincts selected for auditing shall be hand tallied pursuant to the procedures in this subsection.

(a) For election day voting, and when possible, for absentee and early voting, the counting team shall ensure that the serial number for the voting system and the type of ballot to be counted are prominently displayed on the tally sheet. When multiple vote tabulators are used for a precinct as in early voting and absentee voting, this rule may be ignored.

(b) To count the votes by a two person team, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. With a three person team the third person verifies that the marker marks correctly and the reader reads correctly. Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader with the verifier shall confirm these amounts. The marker, the reader and, if present, the verifier shall sign the tally form.

(c) If a two person counting team is used, it is recommended that the ballots be counted again using the sort and stack method. With this method, the ballots are sorted into stacks by candidate, undervotes and overvotes. The stacks are then hand counted. The results of the sort and stack method shall be compared to the hand tally method. Any discrepancies may require the processes in (b) and (c) to be repeated. The reasons for the discrepancies shall be noted on the tally sheet.

(d) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall make the appropriate determination as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

(e) Upon completion of the hand counting of the initial sample of precincts included in the voting system check, and of subsequent samples, if conducted, the results of the hand counting shall be reported to the auditor within 10 days of the notice to conduct the voting system check. If a full hand count is required pursuant to 1-14-13.2, the results shall be reported as soon as practicable.

[1.10.23.9 NMAC - N/E, 10-2-08; A/E, 10-16-08; A/E, 11-3-08; A/E, 10-15-10]

1.10.23.10 RECOUNT AND RECHECK PROCEDURES: This section applies to rechecks and recounts conducted pursuant to Sections 1-14-14 and 1-14-24 NMSA 1978, and recounts resulting from audits performed under Section [~~1-14-13.1~~] 1-14-13.2 NMSA 1978. Except as otherwise provided in Subsection E of Section 1-14-23 NMSA 1978 and this section, the recheck and recount procedures in this section shall be used in conjunction with the procedures in Sections 1-14-16 and 1-14-18 through 1-14-23 NMSA 1978.

A. Time and place; ballot security.

(1) Pursuant to Subsection A of Section 1-14-16 NMSA 1978, the recount or recheck shall be held at the county courthouse.

(2) The county clerk shall arrange for transportation of ballots to the recount or recheck site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the recount or recheck site.

(3) The county clerk shall convene the absent voter precinct board no more than [~~ten (10)~~] 10 days after the filing of the application for a recount or recheck, notice of an automatic recount, or notice of a recount required by Subsection B of Section [~~1-14-13.1~~] 1-14-13.2 NMSA 1978.

(4) The presiding judge of the absent voter precinct board shall assign counting teams of at least two members, of opposite political parties if possible, to particular precincts.

(5) At least one person in addition to the district judge or presiding judge shall witness all movement of ballots during the recount, and all movement of ballots from and to the ballot box during the recount process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.

B. Random selection of ballots to determine whether the recount shall be hand tallied or electronically tabulated. This subsection does not apply to recounts resulting from audits performed under Section [~~1-14-13.1~~] 1-14-13.2 NMSA 1978. To determine whether votes shall be recounted using optical scan vote tabulating systems pursuant to Section 1-14-23 NMSA 1978, the absent voter precinct board shall electronically tabulate absentee ballots from the precincts to be recounted in accordance with the procedures in this subsection.

(1) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into an M-100 optical scan vote tabulating system. A summary zeros results report shall be generated and certified by the precinct board.

(2) Absentee ballots equal to at least the number required by Subsection B of Section 1-14-23 NMSA 1978 shall be fed into the optical scan vote tabulating system.

Any absentee ballots rejected by the optical scan vote tabulating system shall be placed back into the ballot boxes and additional absentee ballots shall be inserted until the number of ballots tabulated by the system is equal to at least the amount required by Subsection B of Section 1-14-23 NMSA 1978. If the absent voter precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedure in Paragraph (1) of this subsection shall be repeated for each precinct being tabulated.

(3) The absent voter precinct board shall then hand tally the votes from the same ballots counted by the optical scan vote tabulating system in accordance with the procedures in Subsection E of this section.

(4) Pursuant to Subsection C of 1-14-23 NMSA 1978, for statewide or federal offices, if the results of the hand-tally and the electronic vote tabulating system differ by one-fourth of one percent or less, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.

(5) Pursuant to Subsection D of 1-14-23 NMSA 1978, for offices other than statewide or federal offices, if the results of the hand-tally and the optical scan vote tabulating system differ by the greater of one percent or less, or two votes, the remaining ballots shall be recounted using optical scan vote tabulating systems pursuant to Subsection C of this section. Otherwise, the remaining ballots shall be recounted by hand in accordance with the procedures in Subsection E of this section.

C. Electronic recount procedures.

(1) Class A counties. If the remaining ballots in a class A county are to be re-tabulated using optical scan vote tabulating systems, the absent voter precinct board shall use an M-650 optical scan vote tabulating system in accordance with the procedures in this paragraph, provided that the M-650 optical scan vote tabulating system was not used to tabulate voted absentee, early-in person or election day ballots. If the M-650 optical scan vote tabulating system was used to tabulate voted ballots, the absent voter precinct board shall use M-100 optical scan vote tabulating systems in accordance with the procedures in Paragraph (2) of this subsection.

(a) To recount the ballots for a particular ballot type (e.g., absentee ballots, election day ballots, early in-person ballots), a results cartridge programmed with ballot configurations for all precincts to be recounted in the county shall be inserted into the optical scan vote tabulating system. A summary zeros report shall be generated and certified by the absent voter precinct board.

(b) The ballots for the ballot type being recounted shall be inserted into the optical vote tabulating system.

(c) The votes from any ballots rejected by the system shall be tallied by hand in accordance with the procedures in Subsection E of this section.

(d) A machine report shall be generated for each precinct after ballots are tabulated for that precinct, and the machine results shall be zeroed out. The ballots for the next precinct shall be tabulated until all ballots for the ballot type being recounted are tabulated.

(e) The procedures in this paragraph shall be repeated for each ballot type being recounted.

(2) Non-class A counties. If the remaining ballots in a non-class A county are to be re-tabulated using optical scan vote tabulating systems, the absent voter precinct board shall use M-100 optical scan vote tabulating systems selected at random by the county clerk in accordance with the procedures in this paragraph.

(a) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into the optical scan vote tabulating system chosen by the county clerk.

(b) A summary zeros report shall be generated and certified by the precinct board.

(c) The ballots for the ballot type (e.g., absentee ballots, election day ballots, early in-person ballots) and precincts to be recounted shall be fed into the optical scan vote tabulating system.

(d) All ballots rejected by the tabulator shall be tallied by hand in accordance with the procedures in Subsection E of this section.

(e) A machine report shall be generated and certified by the absent voter precinct board.

(f) If the absent voter precinct board uses a results cartridge programmed with ballot configurations for all precincts in the county, then the procedures in this paragraph shall be repeated for each ballot type being recounted. If the absent voter precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedures in this paragraph shall be repeated for each precinct being tabulated.

(3) If the voted ballots in a precinct are unavailable or incomplete for recount, the district judge, in consultation with the county clerk, may order that a results tape or report be regenerated from the results cartridge that was used to tabulate the voted ballots.

D. Review of rejected ballots and re-tally of provisional, in-lieu of absentee ballots and other paper ballots in a recount.

(1) The district judge shall orally order that any ballot boxes, envelopes, or containers that hold provisional, in-lieu of absentee, and absentee provisional ballots be opened one at a time.

(2) The presiding judge shall count the total number of provisional, absentee provisional, and in-lieu of absentee ballots in each precinct and the number shall be compared to the previously certified signature roster count in that precinct and noted. Any discrepancies shall be noted.

(3) The county clerk shall review the qualification of all rejected provisional, absentee provisional, and in-lieu of absentee ballots pursuant to Section 1-12-25.4 NMSA 1978 and 1.10.22 NMAC.

(4) The absent voter precinct board shall review the qualification of all rejected absentee ballots in accordance with 1.10.12.15 NMAC and any other rejected ballots in accordance with applicable law.

(5) All previously and newly qualified ballots (including provisional, absentee provisional, in-lieu of absentee ballots, absentee ballots and other paper ballots) shall be recounted and the votes shall be added to the tally of the appropriate precinct.

(6) If any voting data changes as a result of this review, the county clerk shall update the report required in Subsection I of 1.10.22.9 NMAC.

E. Hand counting procedures for recounts. This subsection applies to hand recounts. The secretary of state shall provide tally sheets for only those races being recounted, and shall include options for marking undervotes and overvotes.

(1) The counting team shall ensure that the precinct and the ballot type (eg., election day, early in-person, absentee, in-lieu of absentee, and provisional) being counted are prominently displayed on the tally sheet.

(2) To recount the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.

(3) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote as provided for in Subsection A

and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no case, shall the counting team mark or remark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

(4) If a recount for an office selected for a voting system check is conducted pursuant to the provisions of Chapter 1, Article 14 NMSA 1978, the vote totals from the hand count of ballots for that office in precincts selected for the voting system check may be used in lieu of recounting the same ballots for the recount.

F. Recount and recheck reconciliation procedures.

(1) Upon completion of a recount, the district judge or presiding judge shall tabulate the total vote count from the machine generated tapes or reports and the tally sheets from the hand recount.

(2) The county clerk or secretary of state in a statewide race shall compare the results of each recount or recheck to the results of the county or statewide canvass. County clerks shall make available to the public and provide to the secretary of state the results of the recount or recheck within five [~~(5)~~] days of the completion of the recount or recheck. The secretary of state shall combine the county files and place the results on the secretary of state's website.

(3) Pursuant to Subsection A of Section 1-14-18 NMSA 1978, the absent voter precinct board shall send the certificate of recount or recheck executed pursuant to Subsection D of Section 1-14-16 NMSA 1978 to the proper canvassing board.

(4) In the event of a recount or recheck conducted pursuant to Section 1-14-14 NMSA 1978, if no error or fraud appears to be sufficient to change the winner, the county clerk may provide documentation of costs to the secretary of state, or directly to the candidate, for reimbursement from the money provided pursuant to Section 1-14-15 NMSA 1978.

[1.10.23.10 NMAC - Rn & A/E, 1.10.22.11 & 12 NMAC, 10-2-08; A/E, 11-3-08; A/E, 10-15-10]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD
NOTICE OF REGIONAL HAZE STATE IMPLEMENTATION PLAN HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing commencing on January 10, 2011, and continuing until completed, at the Larrazolo Auditorium, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, New Mexico, for the purpose of hearing the matter in EIB No. 10-05 (R), the New Mexico Environment Department's ("NMED") proposal to adopt revisions to the New Mexico State Implementation Plan for Regional Haze. The proposed Plan establishes requirements for New Mexico to meet the requirements of 40 CFR Section 51.308, including a determination of Best Available Retrofit Technology for nitrogen oxides for the San Juan Generating Station. The Department also believes and will advocate to the U.S. EPA that the proposed plan satisfies New Mexico's obligation to prohibit emissions that would interfere with measures adopted by other states to protect visibility, in accordance with the federal Clean Air Act, 42 U.S.C. Section 7410 (a)(2)(D)(i)(II).

The proposed plan may be reviewed during regular business hours at the NMED Air Quality Bureau office, 1301 Siler Road, Building B, Santa Fe, New Mexico, on NMED's web site at www.nmenv.state.nm.us, or by contacting Rita Bates at (505) 476-4304 or rita.bates@state.nm.us.

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures - Environmental Improvement Board), the Environmental Improvement Act, Section 74-1-9, NMSA 1978, the Air Quality Control Act Section, 74-2-6, NMSA 1978, scheduling, procedural, and other orders entered by the Board or its Hearing Officer, and other applicable procedures.

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

Persons wishing to present technical testimony must file a written notice of intent including the following:
(1) identify the person for whom the witness(es) will testify;
(2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
(3) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
(4) list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rules; and
(5) attach the text of any recommended modifications to the proposed regulatory change.

The notice of intent should also identify the docket number, EIB No. 10-05(R). Notices of intent must be received in the Board's Office no later than 5:00 p.m. on December 23, 2010. The Board's office address is provided below:

Joyce Medina, Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2150 / 2153
Santa Fe, NM 87505
Phone: (505) 827-2425, Fax (505) 827-2836

Any person, including a member of the public, who wishes to present non-technical public comment, testimony, or exhibit may do so without prior notification either in writing at any time before the conclusion of the hearing or in person at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by December 23, 2010 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 827-9872. TDY users may access her number via the New Mexico Relay Network at (800) 659-8331.

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

End of Other Related Material Section

Submittal Deadlines and Publication Dates 2010

Volume XXI	Submittal Deadline	Publication Date
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 18	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30

Submittal Deadlines and Publication Dates 2011

Volume XXII	Submittal Deadline	Publication Date
Issue Number 1	January 4	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 18	April 29
Issue Number 9	May 2	May 16
Issue Number 10	May 17	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

The New Mexico Register is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the New Mexico Register twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.