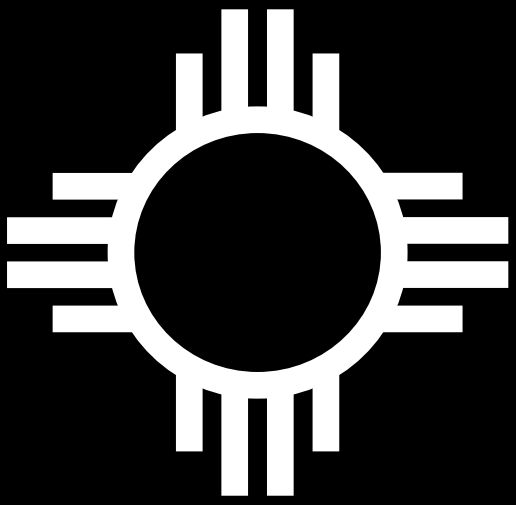
NEW MEXICO REGISTER



Volume XXI
Issue Number 23
December 15, 2010

New Mexico Register

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December 15, 2010

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

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

New Mexico Register

Volume XXI, Number 23
December 15, 2010

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Adopted Rules

Effective Date and Validity of Rule Filings

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on Thursday, January 13, 2011, at 10:00 a.m. in the South Park Conference Room, Ste. 500-590, Santa Fe, NM.

The subject of the hearing is Anesthesia Services. The Human Services Department, Medical Assistance Division (HSD/MAD), is proposing a change to the Medicaid anesthesia provider reimbursement. The Department recently amended this rule; however, specific changes to some sections of the rule were not updated in the final version. Also, the Department has received numerous calls requesting additional clarification on reimbursement for medical direction for certified registered nurse anesthetist (CRNA) and an anesthesiology assistant (AA) services. The Department will take this opportunity to provide clarifying language on this topic.

Changes in the rule being proposed at this time include the following:
8.310.5.15.D - reference to a unit for risk will be deleted.
8.310.5.15 D(3) - reference to variable time units will be deleted.
8.310.5.15 D(4) - reference to risk factors will be deleted.
8.310.5.15 E - clarifying language for reimbursing CRNAs and AAs who are medically directed is added.

Interested persons may submit written comments no later than 5:00 p.m., January 13, 2011, 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, Long Term Services and Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO BOARD OF PODIATRY

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

Notice is hereby given that the New Mexico Board of Podiatry will hold a Rule Hearing and Regular Board Meeting on **January 28, 2011.** Following the Rule Hearing, the New Mexico Board of Podiatry will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Podiatry Rule Hearing will begin at 9:00 a.m. and the Regular Board Meeting will convene following the Rule Hearing. Portions of the regular meeting may be closed to the public while the Board is in Executive Session *Pursuant to§10-15-1.H of the Open Meetings Act.*

The meetings will be held at the Regulation and Licensing Department, 5200 Oakland Avenue NE, Albuquerque, NM 87113 in the main Conference Room.

The purpose of the Rule Hearing is to consider adoption of proposed amendments, repeals and additions to the following Board Rules and Regulations in Title 16, Chapter 21 NMAC: Part 1 General Provisions, Part 3 License by Exam, Part 4 License by Reciprocity, Part 5 Temporary License and Emergency License, Part 7 License Expiration and Renewal, Part 8 Continuing Education, Part 11 Disciplinary Proceedings, Part 12 Management of Medical Records.

Copies of the proposed rule changes may be obtained by contacting the board office in writing at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87505, call (505) 476-4955, or from the board's website: www.RLD.state.nm.us/podiatry after December 27, 2010. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board office in writing no later than January 13, 2011. Persons wishing to present their comments at the hearing will need (9) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4955 at least two weeks prior to the meeting or as soon as possible.

Pauline Varela, Administrator
P.O. Box 25101 - Santa Fe, New Mexico 87504

NEW MEXICO COMMISSION OF PUBLIC RECORDS
STATE RECORDS CENTER AND ARCHIVES

Notice of Public Hearing

The State Records Administrator, New Mexico State Records Center and Archives will hold a public hearing at 9:00 a.m., on Wednesday December 29, 2010 at the State Records Center and Archives building, Commission Room, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507. The public hearing will be held to solicit comments on the following:

Amendments
1.13.10 NMAC Records Custody, Access, Storage and Disposition
1.13.11 NMAC Access to Public Records, Research in the New Mexico Archives

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 Solano at 476-7902 by December 22, 2010. For additional assistance please contact Antoinette. L. Solano at 505 476-7902 or by e-mail at antoinettel.solano@state.nm.us

NEW MEXICO REGULATION AND LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES DIVISION

STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES DIVISION
of the
Regulation and Licensing Department

NOTICE OF PUBLIC HEARING

A Public Hearing on the proposed amendments to the 2009 Swimming Pool, Spa and Hot Tub Code and the 2009 Solar Energy Code (NMAC 14.8.3 and 14.9.6 respectively) will be held the following dates, times and locations:

January 13, 2011, 9:00 am - 12:00 pm: LAS CRUCES, NM - CID Conference Room, 505 So. Main St., Suite 150
January 13, 2011, 9:00 am - 12:00 pm: SANTA FE, NM - CID Conference Room, 2550 Cerrillos Road, 3rd Floor, Santa Fe
January 13, 2011, 9:00 am - 1:00 pm: ALBUQUERQUE, NM - CID Conference Room: 5200 Oakland Avenue, NE

Copies of the proposed rules will be available on the Construction Industries Division's website: www.rld.state.nm.us/cid and at the CID office in Santa Fe beginning December 15, 2011.

You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., January 13, 2011.

If you require special accommodations to attend the hearing, please notify the Division by phone, email or fax, of such needs no later than January 4, 2011. Telephone: 505-476-4686. Email: www.rld@state.nm.us/cid Fax No. 505-476-4685.

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL

TITLE 12 TRADE, COMMERCE, AND BANKING
CHAPTER 2 CONSUMER PROTECTION
PART 12 COLLECTION OF TIME-BARRED DEBT

12.2.12.1 ISSUING AGENCY: Office of the New Mexico Attorney General.
[12.2.12.1 NMAC - N, 12/15/10]

12.2.12.2 SCOPE: Disclosure of time-barred debt.
[12.2.12.2 NMAC - N, 12/15/10]

12.2.12.3 STATUTORY AUTHORITY: The New Mexico Unfair Practices Act, NMSA 1978, Section 57-12-1, et seq. (1967).
[12.2.12.3 NMAC - N, 12/15/10]

12.2.12.4 DURATION: Permanent.
[12.2.12.4 NMAC - N, 12/15/10]

12.2.12.5 EFFECTIVE DATE: December 15, 2010, unless a later date is cited at the end of a section.
[12.2.12.5 NMAC - N, 12/15/10]

12.2.12.6 OBJECTIVE: The purpose of this rule is to ensure a uniform understanding and practice within the debt collection industry regarding what information is required to be provided to consumers when a debt that the debt collector, acting in the regular course of his or her trade or commerce, is attempting to collect is unenforceable in judicial proceedings due to the running of the applicable statute of limitation. The implementation of the notices required in this rule will obviate an industry-wide practice that tends to or does mislead or deceive by failing to provide material information to consumers. NMSA 1978, Section 57-12-2(D)(14).
[12.2.12.6 NMAC - N, 12/15/10]

12.2.12.7 DEFINITIONS:

A. "Collection of debt" means any effort by any person acting in the regular course of his or her trade or commerce, including, but not limited to, the original lender or obligee, or any assignee of the original lender or obligee, or any assignee of any owner of the debt other than the original lender or obligee, or any third party attempting to collect the debt on behalf of the debt owner, to obtain payment of all or any part of the debt from the person who owes the debt.

B. "Clear and conspicuous" has the same meaning as the term "conspicuous" defined at NMSA 1978, Section 55-1-201(b)(10) (1961), of the New Mexico Commercial Code; EXCEPT that it shall exclude the requirement that all words be in capitalized lettering.

C. "Debt" means any obligation owed or alleged to be owed by one person to another.

D. "Debt collector" means any person who, in the regular course of the person's trade or commerce, collects or attempts to collect a debt owed or alleged to be owed by any person in New Mexico, including, but not limited to, the original lender or obligee, any assignee of the original owner, and third party collectors who are "debt collectors" as defined by the Fair Debt Collection Practices Act, 15 U.S.C. Section 1692a(6).

E. "Good faith" means an honest, fair and reasonable belief that rests on a reasonable assessment of those facts reasonably and fairly available, and not necessarily limited only to those facts actually in possession. "Good faith" may require a fair and reasonable inquiry of others in possession of information known or believed to be relevant to the matter at issue. See, in part, State v. Sanchez, 88 N.M. 378, 382, 540 P.2d 858 (Ct.App. 1975); rev.'d, other grds., 88 N.M. 402, 540 P.2d 1291 (1975); NMSA 1978, Section 55-1-201(b)(20) (1961).

F. "Least sophisticated consumer" means the standard for evaluating truth and deception under the federal Fair Debt Collection Practices Act, 15 U.S.C. Section 1692 et seq., as summarized in Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985).

G. "Person" means natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates.

H. "Statute of limitation" means the time period established by law in which an aggrieved party may bring a cause of action in judicial proceedings; e.g., NMSA 1978, Sections 37-1-3 (six years for written contracts), 37-1-4 (four years for unwritten contracts and accounts), or 55-2-725 (four years for breach of contract for sale of goods).

I. "Time-barred debt" means any debt that is not enforceable in a judicial proceeding because the applicable statute of limitation has run.
[12.2.12.7 NMAC - N, 12/15/10]

12.2.12.8 DUTY TO DETERMINE IF DEBT IS TIME-BARRED: Every debt collector attempting to collect a debt in the state of New Mexico has a duty to determine, in good faith, whether each debt it is attempting to collect is or is not time-barred.
[12.2.12.8 NMAC - N, 12/15/10]

12.2.12.9 UNFAIR OR DECEPTIVE PRACTICES; REQUIRED DISCLOSURES:

A. It is an unfair or deceptive trade practice for any debt collector acting in the regular course of his or her trade or commerce, whether directly or indirectly, by letter, telephone, electronically or by any other means, to collect or to attempt to collect from any person any payment of any debt that the debt collector knows or has reason to know is a time-barred debt, or to seek or obtain from any person any payment, admission, affirmation, acknowledgement of a debt, or new promise to pay, or any waiver of legal rights or defenses with regard to any debt, that the debt collector knows or has reason to know is a time-barred debt unless the debt collector discloses the following information:

(1) the disclosure is prefaced with the following statement: "We are required by New Mexico Attorney General rule to notify you of the following information. This information is not legal advice.";

(2) either that the debt is unenforceable through a lawsuit because the time for filing has expired, or that it may be unenforceable through a lawsuit because the time for filing may have expired;

(3) if the debt is time-barred, the person cannot be required to pay the debt through a lawsuit;

(4) the person is not required by the law: to sign any admission, affirmation or acknowledgement of, or new promise to pay the debt; or to make any payment on the debt; or to waive any of his or her rights with regard to the effect of the running of the applicable statute of limitation;

(5) an explanation of the consequences pursuant to NMSA 1978, Section 37-1-16, with regard to the revival of the statute of limitation resulting from: any payment on the debt; any signed admission, affirmation or acknowledgement of the debt; any signed new promise to pay the debt; any waiver of the debtor's legal rights resulting from the unenforceability of the debt due to the running of the applicable statute of limitation.

B. A debt collector who makes the following disclosure shall be deemed to have complied with the requirements of Subsection A of 12.2.12.9 NMAC: "We are required by New Mexico Attorney General rule to notify you of the

following information. This information is not legal advice: This debt may be too old for you to be sued on it in court. If it is too old, you can't be required to pay it through a lawsuit. You can renew the debt and start the time for the filing of a lawsuit against you to collect the debt if you do any of the following: make any payment of the debt; sign a paper in which you admit that you owe the debt or in which you make a new promise to pay; sign a paper in which you give up ("waive") your right to stop the debt collector from suing you in court to collect the debt."

C. The disclosures required by Subsection A of 12.2.12.9 NMAC shall be in plain language, and shall be designed to reasonably and fairly inform the least sophisticated consumer.

D. If the demand for payment is in a language other than English, the debt collector shall give the disclosures required by Subsection A of 12.2.12.9 NMAC in that language.

E. In the case of written communications, the disclosures required by Subsection A of 12.2.12.9 NMAC or Subsection B of 12.2.12.9 NMAC shall be clear and conspicuous and shall be placed on the front page.

F. In the case of oral communications, the disclosures required by Subsection A of 12.2.12.9 NMAC or Subsection B of 12.2.12.9 NMAC shall be made immediately before or immediately after the first statement requesting payment, or, if no request for payment is made, no later than immediately after reference to the debt is first made.

G. The disclosures required by Subsection A of 12.2.12.9 NMAC shall be given only to those debtors whom the debt collector reasonably and in good faith determines owes a debt that is time-barred.

H. It is a defense to the requirements of Subsection A of 12.2.12.9 NMAC, Subsection B of 12.2.12.9 NMAC, and Subsection G of 12.2.12.9 NMAC if, in making the erroneous determination, the debt collector exercised reasonable efforts to determine whether the debt was time-barred or not and made the error in good faith, as supported by the debt collector's documentation. The absence of any documentation creates a rebuttable presumption of the lack of reasonable efforts and good faith.

[12.2.12.9 NMAC - N, 12/15/10]

12.2.12.10 VIOLATION OF THE UNFAIR PRACTICES ACT: Violation of this rule constitutes a violation of the New Mexico Unfair Practices Act, NMSA 1978, Section 57-12-1 et seq.

[12.2.12.10 NMAC - N, 12/15/10]

12.2.12.11 SEVERABILITY: If any portion of this rule is held invalid, the remainder of the rule and the applications thereof shall remain unaffected.

[12.2.12.11 NMAC - N, 12/15/10]

HISTORY OF 12.2.12 NMAC: [RESERVED]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

STATE PARKS DIVISION

This is an amendment to 19.5.1 NMAC, Section 7, effective 12/30/2010.

19.5.1.7 DEFINITIONS:

A. "Authorized areas" means locations, places, sites, regions, zones or spaces identified by the director or, for purposes of hunting or fishing, the state game commission. These areas may be defined with signs or other appropriate proclamation or means. For purposes of bowfishing, authorized areas include all parks where fishing is allowed.

[~~A.~~]B. "Boating and rafting excursions" means a guiding service for boating or rafting trips offered to the general public.

[~~B.~~]C. "Capital improvement" means a construction project by a concessionaire to the concession premises that is not maintenance or repair and that costs at least $1000.

[~~C.~~]D. "Commercial activity" means for-profit sales or services but does not include the operation of vending machines unless the vending machine is operated as part of a larger concession operation.

[~~D.~~]E. "Commercial filming" means the use of motion picture, videotaping, sound recording or other moving image or audio recording equipment that involves the advertisement of an event, product or service; the creation of a product for sale including film, videotape, television broadcast or documentary of participants in commercial sporting or recreation events for the purpose of generating income; or the use of actors, models, sets, or props.

[~~E.~~]F. "Commercial photography" means still images taken with a camera that the photographer intends to sell.

[~~F.~~]G. "Concession" means commercial activity conducted within a park the department has authorized in writing.

[~~G.~~]H. "Concessionaire" means the owner or operator of a concession who operates pursuant to a department-issued concession contract.

[~~H.~~]I. "Concessions administrator" means a division employee who maintains records and documentation concerning concession contracts and concession permits.

[~~I.~~]J. "Concession contract" means an agreement between the department and a person, or business entity, which allows the concessionaire to provide services, merchandise, accommodations or facilities within a park. The concessionaire shall occupy a permanent structure or location within the park. The concession contract's term shall not exceed 30 years pursuant to NMSA 1978, Section 16-2-9.

[~~J.~~]K. "Concession permit" means a permit the department issues to a person or business entity to provide services in a park for a time period of up to one year. The fee for a concession permit is established in 19.5.6 NMAC. Services the division may authorize under a concession permit include guiding and outfitting services for fishing, boating and rafting excursions; educational and park resource protection services; and other services, including commercial services, that enhance visitors' experience and enjoyment, such as sales of firewood, propane, ice, food or refreshments.

[~~K.~~]L. "Concession permittee" means the holder of a department-issued concession permit.

[~~L.~~]M. "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

[~~M.~~]N. "Department" means the energy, minerals and natural resources department.

[~~N.~~]O. "Developed site" means a park camping site with at least one shelter, table or grill or a combination of two or more such facilities at the site. Sites with recreational vehicle utility hookups are considered developed regardless of the presence of shelters, tables or grills.

[~~O.~~]P. "Director" means the director of the energy, minerals and natural resources department, state parks division.

[~~P.~~]Q. **"**Director designee" means persons the director appoints including deputy directors, bureau chiefs, regional managers and park superintendents.

[~~Q.~~]R. "Division" means the energy, minerals and natural resources department, state parks division.

[~~R.~~]S. "Flotation assist device" means a wet suit or wearable flotation device in good condition capable of providing flotation to the wearer on the water's surface.

[~~S.~~]T. "Geocaching" means an outdoor treasure-hunting activity in which the participants use a global positioning system receiver or other navigational means to hide or find containers called "geocaches" or "caches".

[~~T.~~]U. **"**Gross receipts from sales and services" means the total amount of receipts from sales and services.

[~~U.~~]V. "Guide" means an

individual or an employee of an outfitter who is hired to escort or accompany clients in fishing, rafting or boating.

[~~V.~~]**W.** "Letter boxing" means an outdoor hobby that combines elements of orienteering, art and puzzle solving. Letter boxers hide small, weatherproof boxes in publicly-accessible places and distribute clues to finding the boxes in printed catalogs, on websites or by word of mouth. The activity is characterized by the boxes containing a logbook and a rubber stamp. Letter boxers stamp the box's logbook with personal rubber stamps and use the box's stamp to imprint their personal logbooks as proof they found the box.

[~~W.~~]**X.** "Net receipts from sales and services" means the total amount of receipts from sales and services, less the amount of gross receipts taxes.

[~~X.~~]**Y.** "Off highway motor vehicle" means a motor vehicle operated or used exclusively off New Mexico's highways and that is not legally equipped for operation on the highway; this includes all terrain vehicles.

[~~Y.~~]**Z.** "Outfitter" means a person or company who employs guides.

[~~Z.~~]**AA.** "Park" means an area designated as a state park within the state parks system and that the division manages or owns.

[~~AA.~~]**BB.** "Park management and development plan" means a plan used as a guide for expansion, services, programs and development for the park.

[~~BB.~~]CC. "Park support group" means an organization as defined in NMSA 1978, Section 6-5A-1 or an organized group of individuals that volunteers time, services or funds to promote and support the division or an individual park and whose principal purpose as authorized by the division is to complement, contribute to and support, aid the function of or forward the division's or park's purposes.

[~~CC.~~]**DD.** "Person" means an individual, partnership, firm, corporation, association, joint venture or other entity.

[~~DD.~~]**EE.** "Personal flotation device" means a coast guard approved life preserver, buoyant vest, hybrid device, ring buoy or buoyant cushion.

[~~EE.~~]**FF.** "Primitive site" means a camping site that offers no facilities except a cleared area for camping. Primitive sites may have trash receptacles, chemical toilets or parking.

[~~FF.~~]**GG.** "Rally" means a parking area or facility designated for group functions.

[~~GG.~~]**HH.** "Receipts" means consideration in money and in trade received from sales and charges for services.

[~~HH.~~]**II.** "Regional manager" means a division employee responsible for several parks within a region.

[**II.**]**JJ.** "Sales and services" means transactions by a concessionaire, or a concessionaire's agents or employees, for which the concessionaire receives consideration in money or money's worth in connection with the concession business operated pursuant to the concession contract.

[~~JJ.~~]**KK.** "Secretary" means the secretary of the department.

[~~KK.~~]**LL.** "Special use permit" means a permit the division has issued to a person, business entity, park support group or organized group to provide an event or activity within a park. Examples of special use events and activities include regattas, boat races, parades, races, fishing tournaments, exhibitions and educational activities. The term of a special use permit shall be for the duration of the approved event or activity but shall not be issued for a period of more than five consecutive calendar days.

[~~LL.~~]**MM.** "State park official" means a division employee.

[~~MM.~~]**NN.** "State parks system" means land and water in a park.

[~~N N . ~~] **O O .** "Superintendent" means a division employee who is in charge of a specific park; which includes a park superintendent or park manager.

[~~OO.~~]**PP.** "Vending machine" means a coin-operated beverage, snack or service machine subject to division approval.

[~~PP.~~]**QQ.** "Working days" means Monday through Friday, excluding state holidays.

[7-17-67, 7-25-72, 7-31-79, 12-21-89, 12-31-89, 5-20-92, 12-31-96, 12-31-98, 7-1-99; 19.5.1.7 NMAC - Rn & A, 19 NMAC 5.1.7, 12/31/02; A, 5/1/04; A, 1/1/08; A, 12/30/2010]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

STATE PARKS DIVISION

This is an amendment to 19.5.2 NMAC, Sections 13, 19, 20, 30, 33, 36, 37, and the addition of new Sections 38 and 39, effective 12/30/2010.

19.5.2.13 USE OF FACILITIES:

A. Facilities are available on a first come, first served basis with the exception of parks where the division has established a reservation program and a visitor has reserved the facility. Campers shall not save or reserve camping spaces for other individuals even by purchasing additional permits. Campers shall not have sole and continuing possession of a picnic or shade shelter or other park facility to the exclusion of other visitors except as provided in 19.5.2.11 or 19.5.2.12 NMAC unless the superintendent has granted permission.

B. Visitors using a park facility shall keep it in a clean and sanitary manner and shall leave it in a clean and sanitary condition.

C. The division has developed and designated special facilities for the use of individuals with disabilities. Individuals with disabilities shall have preferential use of these facilities over other persons.

D. Visitors shall not remove water [~~for domestic use~~] from the park for use outside the park or deposit [~~domestic~~] trash generated outside the park within a park.

E. Advance reservations are required for the use of meeting rooms. Meeting rooms are not available at all parks. A person who reserves a meeting room is responsible for setting up the room, cleaning the room after use and leaving the room in the same condition it was in before use. See 19.5.6 NMAC for meeting room fees.

F. The director may designate areas within the state parks system for use by reservation.

G. Advance reservations are required for the use of group shelters, group areas or reservation campsites. Users shall pay the appropriate day use or camping fees in addition to the reservation fee. The division may accept annual permits at reservation campsites if posted. See 19.5.6 NMAC for group shelter fees.

[19.5.2.13 NMAC - Rp, 19.5.2.13 NMAC, 1/1/2008; A, 12/30/2010]

19.5.2.19 HORSEBACK RIDING: Visitors may ride horses only in designated areas within the state parks system. Visitors wishing to bring or ride horses in [~~parks~~] a park shall check with the superintendent in advance for approval, restrictions and area designations as some parks prohibit horses and horseback riding. Visitors shall not use or possess hay or feed in parks located on state game commission property, including Clayton lake state park, Fenton lake state park, Cimarron canyon state park, Mesilla Valley state park and Eagle Nest lake state park, that is not certified as weed free by the New Mexico state university's certified weed free forage program or another governmental entity's certified weed free forage program.

[19.5.2.19 NMAC - Rp, 19.5.2.19 NMAC, 1/1/2008; A, 12/30/2010]

19.5.2.20 FIREARMS AND BOWS:

A. Visitors shall not possess firearms, including concealed firearms, with a cartridge in any portion of the mechanism or discharge firearms,

including concealed firearms[~~, arrows and air or gas fired projectiles, weapons and other devices capable of causing injury to persons or animals or damage or destruction of property in the state parks system~~], except during designated hunting seasons or in authorized areas. No such activity is allowed within 300 yards of a developed park area or occupied campsite. Subsection A of 19.5.2.20 NMAC does not apply to on duty law enforcement officials.

B. Visitors shall not use arrows, bolts and air or gas fired projectiles, weapons and other devices capable of causing injury to persons or animals or damage or destruction of property in the state parks system, except during designated hunting seasons or in authorized areas. Except for park authorized events and activities, no such activity is allowed within 100 yards of a developed park area or occupied campsite. Subsection B of 19.5.2.20 NMAC does not apply to on duty law enforcement officials.

[19.5.2.20 NMAC - Rp, 19.5.2.20 NMAC, 1/1/2008; A, 12/30/2010]

19.5.2.30 FEES AND CHARGES:

A. Upon entering a park, visitors shall pay fees and charges in accordance with 19.5.6 NMAC. The visitor shall display applicable permits in accordance with instructions provided with the permit. If a visitor fails to obtain a permit, state park officials may field collect fees and may include an administrative fee in addition to the required fee. See 19.5.6 NMAC. The visitor's failure to pay the administrative fee may result in civil damages, criminal action or eviction from the park.

B. Fees, charges and permit display requirements do not apply to:

(1) government agencies or government officials or employees, including law enforcement and emergency service personnel, who are performing official duties (official duties do not include activities that do not have to occur in a park such as conferences, retreats or training);

(2) non-governmental emergency service personnel, such as private ambulance companies, who are performing their official duties;

(3) persons traveling nonstop through a park on a state or federal highway, county road, federal road or municipal road or street;

(4) on duty news media personnel who are reporting on events or activities within a park and are only in the park to report on those events or activities; or

(5) individuals or groups who are entering the park to provide volunteer services and have signed a volunteer agreement with the division or have made arrangements with the division to provide volunteer services.

C. Fees and charges do not apply to:

(1) division contractors, suppliers or agents or other persons providing services to a park who are not using the park or its facilities for purposes other than providing services to the park;

(2) concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents who are only traveling to and from the concession and are not using the park or its facilities for personal use;

(3) persons needing to pass through a park to access private property who are only passing through the park and are not using the park or its facilities; or

(4) park support group members or volunteers who have a park pass issued pursuant to Subsection D of 19.5.2.36 NMAC.

[~~**B.**~~]**D.** Visitors not subject to Subsection B of 19.5.2.30 NMAC shall display permits at all times inside a park.[~~ Nonstop highway travel through a park on numbered state highways does not require a park use permit.~~]

[~~**C.**~~]**E.** [~~The superintendent may waive or reduce park fees for government agencies. The superintendent or director may waive or reduce park fees for organized youth groups or special events and the director may waive or reduce park fees for special circumstances where the consideration for the reduced or waived fees is to the equal benefit of the division or the park through advertising, promotion, volunteer hours, etc.~~] The superintendent or director may waive or reduce park fees for primary or secondary school groups or college or university groups that are involved with a division educational program or have made arrangements with the division to conduct research within a park or for governmental entities holding such activities as trainings, retreats or conferences at a park.

[~~**D.**~~]**F.** State park officials may issue rain checks for unused, prepaid daily camping activities or the cancellation of a group shelter reservation.

[~~**E.**~~]**G.** The division or its contractors may charge fees in addition to the appropriate use fee for reservation processing and cancellation. The contractor or state park officials shall collect the reservation fee for those park sites where the division has established a reservation program. See 19.5.6 NMAC. Visitors shall pay the reservation fee in advance with applicable fees for camping, electricity or other service for the total reservation period.

[~~**F.**~~]**H.** **[**~~The division may charge fees in addition to the appropriate use fees for special events such as concerts, festivals, etc. The fee shall not exceed the value of admission to such event.~~] In addition to the appropriate use fees, the division may charge additional fees for special events such as concerts, festivals, etc. The additional fees shall not exceed the value of admission to the special events.

[19.5.2.30 NMAC - Rp, 19.5.2.27 NMAC, 1/1/2008; A, 12/30/2010]

19.5.2.33 ANNUAL PERMITS AND PASSES:

A. Annual day use passes.

(1) Annual day use passes authorize the vehicle owner or individual to access and use the park at no additional charge during the times indicated in 19.5.2.11 NMAC. Visitors may use annual day use passes at all parks, except at the living desert zoo and gardens state park and Smokey Bear historical park.

(2) When purchasing an annual day use pass visitors shall comply with the instructions on the pass and provide their name and address.

(3) The division does not issue extra vehicle passes for annual day use passes.

B. Annual camping permits.

(1) Annual camping permits authorize the vehicle owner or individual to access and use the park at no additional charge except for utility hookups during the times indicated in 19.5.2.12 NMAC. The annual camping permit allows the visitor one sleeping unit. A motor home towing a vehicle or a vehicle towing a camping trailer is considered a sleeping unit. The visitor shall pay the per night camping fee for additional vehicles.

(2) Annual camping permits are available for:

(a) New Mexico residents as documented with a current New Mexico driver's license or other state of New Mexico issued photo identification;

(b) New Mexico residents 62 years of age or older as documented with a current New Mexico driver's license or other state of New Mexico issued photo identification;

(c) New Mexico residents with [~~physical~~] disabilities who present a New Mexico handicap motor vehicle license plate issued to them; [~~or~~] a blue handicap placard with a placard holder identification card [~~the New Mexico taxation and revenue department, motor vehicle division issues containing their name and placard number to verify disability~~] issued to them by the taxation and revenue department, motor vehicle division if the placard was issued before June 4, 2008; a blue handicap placard with the photograph of the placard holder issued to them by the taxation and revenue department, motor vehicle division if the placard was issued on June 4, 2008 or after; a New Mexico department of game and fish [~~department~~] lifetime hunting and fishing card containing their name; a written

determination from the United States social security administration finding that they are currently eligibile for social security disability benefits or supplemental security income disability benefits; or a photocopy of the award letter the United States department of veterans affairs issues indicating [~~the veteran has~~] they have a 100% service-connected disability; and

(d) all-out-of-state-residents including senior citizens and persons with disabilities.

(3) When purchasing an annual camping permit, visitors shall comply with the instructions on the permit and provide their name; address; if applicable, proof of age or residency; and the license plate number of the vehicle for which the visitor is purchasing the permit.

(4) Visitors may use annual camping permits at all parks, except at the living desert zoo and gardens state park and Smokey Bear historical park.

C. Annual day use passes and annual camping permits expire 12 months after the date the division issues them. The division shall not make refunds or prorations for permits or passes that remain in effect for less than 12 months.

D. Visitors may obtain replacement annual camping permits and stickers by submitting a signed affidavit describing the facts of the purchase and the permit's loss or destruction and, if available, the original permit or proof of purchase. The division does not issue replacements for annual day use passes.

E. The division may sell gift certificates for annual day use passes and annual camping permits.

[19.5.2.33 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008; A, 12/30/2010]

19.5.2.36 PARK PASSES:

A. Concessionaires. The director or director designee (see Subsection [~~P~~]Q of 19.5.7 NMAC) may issue park passes to concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents for access to and from the concession. Concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents using the park, lake or facilities away from the concession premise shall pay the appropriate fees.

B. Contractors. The director or director designee (see Subsection [~~P~~]Q of 19.5.1.7 NMAC) may issue park passes to division contractors, suppliers or agents or other persons providing services to a park for access to the park. Division contractors, suppliers or agents or other persons providing services to a park using the park or its facilities for purposes other than providing services to a park shall pay the appropriate fees.

C. Access to private property. The director or director designee may issue park passes to persons needing to pass through a park to access private property. Persons with such park passes shall only use the park passes to travel through the park. If they use the park or its facilities they shall pay the appropriate fees.

D. Park support groups and volunteers. The director or director designee may issue park passes to individuals who are members of a park support group that has entered into an agreement with the department or, as provided in division policy, to volunteers who significantly contribute to the division.

[~~C~~]**E.** Complimentary park passes. [~~The director or director designee (see Subsection P of 19.5.1.7 NMAC) may issue complimentary passes to legislators so that they may learn about park operations; to park advisory board members, volunteers or individuals who significantly contribute to the division; or in exchange for promotion of the division or advertising.~~] The director or director designee (see Subsection Q of 19.5.1.7 NMAC) may issue complimentary passes as rainchecks to visitors for unused services or to resolve visitor complaints about park operation or maintenance.

F. Official use passes. The director may issue "official use only" passes to state government executive branch officials with direct oversight of the division, park advisory board members and state legislators for the performance of their official duties.

G. Advertising and promotions. To promote the parks or in exchange for advertising or promotion of parks, the director may issue free or discounted park passes or not charge fees if the director obtains the secretary's approval after the division provides the secretary with written justification showing that the issuance of park passes for promotion or advertising or not charging fees for promotional purposes provides a benefit to the division. Reduced rates for advertising must be equal to or exceed the value of the park passes that the division provides in exchange for receiving the reduced rates.

[19.5.2.36 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008; A, 12/30/2010]

19.5.2.37 SPECIAL USE PERMITS:

A. [~~The division shall authorize short term events and activities within the state parks system, such as regattas, boat races, parades, races, fishing tournaments, exhibitions and educational activities only by a special use permit and only after payment of associated fees. See 19.5.6 NMAC. State park officials shall only issue special use permits for events and activities that provide a needed service to the park and that benefit the park.~~] The division shall authorize public assemblies involving groups of more than 10 people; public assemblies involving groups of 10 people or less that are using stages, platforms or structures; or special events within the state parks system only by special use permit and only after payment of associated fees. Persons shall submit applications for special use permits to the superintendent of the park where the special event or public assembly is proposed at least 15 calendar days prior to the special event or public assembly, or at least 30 calendar days prior to the special event if the special event is a regatta, motorboat or boat race, marine parade, tournament or exhibition. [~~State park officials shall not issue a special use permit for a period of more than five consecutive calendar days. The park may charge fees in addition to the special use fee to cover costs of additional staff, facilities, etc. needed for the event.~~] The director may waive the time limits for submittal of special use permit applications where arrangements can be made in a shorter time without placing an undue administrative burden on staff or when no special arrangements are necessary.

B. Persons shall complete the division-provided special use permit, which may include the park where the [~~event or activity~~] special event or public assembly is proposed; the location of the proposed [~~event or activity~~] special event or public assembly within the park; the date of the proposed [~~event or activity~~] special event or public assembly; start and end times for the proposed [~~event or activity~~] special event or public assembly; the number of people expected to attend; a detailed description of the proposed [~~event or activity~~] special event or public assembly; the applicant's name, address and phone number; a hold harmless requirement if the applicant is a non-governmental entity; insurance coverage; and designation of the type of [~~the~~] proposed [~~event or activity~~] special event or public assembly (*i.e.* special use, marine event, park event, etc.).

C. The superintendent shall approve the special use permit, approve the special use permit with conditions or deny the special use permit as provided in 19.5.2.37 through 19.5.2.39 NMAC. The superintendent shall not issue a special use permit for a period of more than five consecutive calendar days. The park may charge fees in addition to the special use permit fee to cover costs of additional staff, facilities, etc. needed for the special event or public assembly. The division may enter into an agreement with the special use permittee to have the special use permittee pay a fee equal to the estimated fees, such as day use fees, that individuals attending the special event would have paid in fees in lieu of such fees.

[C.]D. No person shall violate a condition or restriction attached to or indicated on the special use permit. The division may [~~cancel~~] revoke a permit if the permit holder violates 19.5.2 NMAC. The superintendent may also revoke a special use permit for any of the conditions that constitute grounds for denial of a special use permit as provided in Subsection B of 19.5.2.38 NMAC for special events and Subsection B of 19.5.2.39 NMAC for public assemblies, or for violation of the terms and conditions of the special use permit. Such a revocation shall be made in writing, with the reasons for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation may be made to be followed by written confirmation within 72 hours.
[19.5.2.37 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008; A, 12/30/2010]

19.5.2.38 SPECIAL EVENTS:

A. Special events are allowed in a park if the applicant has obtained a special use permit from the superintendent.

B. The superintendent shall deny a special use permit if such activities would:

(1) cause injury or damage to park resources;

(2) be contrary to the purposes for which the park is established or operated; or unreasonably impair the purposes for which the park is established or operated;

(3) unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;

(4) substantially impair the operation of the division's public use facilities or services of concessionaires or contractors;

(5) present a danger to the public health and safety;

(6) result in significant conflict with other existing uses; or

(7) not comply with the laws or policies of the landowner (*e.g.* United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers, New Mexico state land office, etc.).

C. As a condition of the special use permit's issuance, the superintendent may require:

(1) for non-New Mexico government or non-federal government applicants, the filing of a bond payable to the director, in an amount adequate to cover costs such as restoration, rehabilitation and cleanup of the area used, and other costs resulting from the event; or

(2) the acquisition of liability insurance in which the state, department and division are named as co-insured in an amount sufficient to protect the state, the department and the division.

D. The special use permit may contain such conditions as are reasonably consistent with protection and use of the park for the purposes for which it is established or operated. It may also contain reasonable limitations on the equipment used and the time and area within which the special event is allowed.
[19.5.2.38 NMAC - N, 12/30/2010]

19.5.2.39 PUBLIC ASSEMBLIES, MEETINGS:

A. Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within parks. A special use permit issued by the park superintenent is required for public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views that involve groups of

(1) more than 10 people; or

(2) 10 people or less who are using stages, platforms or structures.

B. The superintendent shall, without unreasonable delay, issue a special use permit on proper application unless:

(1) a prior application for a special use permit for the same time and place has been made that has been or will be granted and the activities authorized by that special use permit do not reasonably allow multiple occupancy of that particular area;

(2) it reasonably appears that the event will present a danger to the public health or safety; or

(3) the event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, interference with program activities or impairment of public use facilities.

C. If the superintendent denies a special use permit, the superintendent shall inform the applicant in writing with the reasons for the denial set forth.

D. The superintendent shall designate on a map, which shall be available in the office of the superintendent, the locations available for public assemblies. Locations may be designated as not available if such activities would:

(1) cause injury or damage to park resources;

(2) unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;

(3) substantially impair the operation of public use facilities or services of division concessionaires or contractors; or

(4) present a danger to the public health and safety.

E. The special use permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

F. It is prohibited for persons engaged in activities permitted or authorized pursuant to 19.5.2.39 NMAC to obstruct or impede pedestrians or vehicles, harass park visitors, interfere with park programs or create security or accessibility hazards.
[19.5.2.39 NMAC - N, 12/30/2010]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

20.2.87 NMAC, Greenhouse Gas Emissions Reporting (filed 11/20/2007) repealed 01/01/2011.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 300 REPORTING OF GREENHOUSE GAS EMISSIONS

20.2.300.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.300.1 NMAC - N, 01/01/11]

20.2.300.2 SCOPE: All persons who own or operate an applicable source of greenhouse gas emissions in the geographic area within the jurisdiction of the environmental improvement board.
[20.2.300.2 NMAC - N, 01/01/11]

20.2.300.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically Sections 74-2-5(B)(1) & 74-2-(5)(C)(5)(d) & (e).
[20.2.300.3 NMAC - N, 01/01/11]

20.2.300.4 DURATION: Permanent.
[20.2.300.4 NMAC - N, 01/01/11]

20.2.300.5 EFFECTIVE DATE: January 1, 2011 except where a later date is cited at the end of a section.
[20.2.300.5 NMAC - N, 01/01/11]

20.2.300.6 OBJECTIVE: The

objective of this part is to establish requirements for the annual reporting of greenhouse gas emissions to the department.
[20.2.300.6 NMAC - N, 01/01/11]

20.2.300.7 DEFINITIONS: The definitions included in this part shall also apply to the terms used in 20.2.301 NMAC. The definitions included in 20.2.2 NMAC shall apply to the terms used in this part, unless such term is defined or incorporated in this part. Except as otherwise provided, the following modifications, exceptions and omissions are made to 40 CFR 98 definitions that are incorporated into this part pursuant to 20.2.300.100 NMAC.

A. "Acid gas" means hydrogen sulfide (H2S) and carbon dioxide (CO2) contaminants that are separated from sour natural gas by an acid gas removal [unit].

B. "Acid gas removal unit" or "AGR" means a process unit that separates hydrogen sulfide and/or carbon dioxide from sour natural gas using liquid or solid absorbents or membrane separators.

C. "Acid gas removal vent stack emissions" means the acid gas separated from the acid gas absorbing medium (for example, an amine solution) and released with methane and other light hydrocarbons to the atmosphere or a flare.

D. "Administrator" means the secretary of the New Mexico environment department or his or her designee.

E. "cap emissions" means all emissions that are required to be reported under 20.2.300 NMAC, except those that are defined as reporting-only emissions and emissions that are not subject to verification under 20.2.301 NMAC.

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

G. "Cogeneration system" means individual cogeneration components including the prime mover (heat engine), generator, heat recovery, and electrical interconnection, configured into an integrated system that provides sequential generation of multiple forms of useful energy (usually electrical and thermal), at least one form of which the facility consumes on-site or makes available to other users for an end-use other than electricity generation.

H. "Cogeneration unit" means a stationary fuel combustion device which simultaneously generates electrical and thermal energy that is (i) used by the owner or operator of the facility where the cogeneration unit is located; or (ii) transferred to another facility for use by that facility.

I. "Compliance period" means a three-calendar-year time period. The first compliance period is from January 1, 2012 through December 31, 2014. Each subsequent sequential three-calendar-year period is a separate compliance period.

J. "Emissions" means the release of greenhouse gases into the atmosphere from sources and processes in a facility.

K. "EPA" means the New Mexico environment department, except in subsection 98.3(h), section 98.7, paragraph 98.33(a)(5), and subpart D of 40 CFR 98, and in reference to EPA publications and EPA methods published elsewhere than in 40 CFR 98.

L. "Reporting-only emissions" means the following emissions that are reported under 20.2.300 NMAC.

(1) Fugitive hydrofluorocarbon emissions from cooling towers at electrical generating units, as required by Paragraph (2) of Subsection A of 20.2.300.103 NMAC;

(2) As required to be reported by petroleum refineries under 40 CFR 98 Subpart Y and 20.2.300.106 NMAC, emissions from:

(a) asphalt blowing operations, as specified in 40 CFR 98.253(h);

(b) equipment leaks, as specified in 40 CFR 98.253(l);

(c) storage tanks, as specified in 40 CFR 98.253(m); and

(d) loading operations, as specified in 40 CFR 98.253(n).

(3) Emissions of any greenhouse gas other than carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and nitrogen trifluoride.

M. "Reporting year" means the calendar year for which emissions are being reported in the emissions data report.
[20.2.300.7 NMAC - N, 01/01/11]

20.2.300.8 SEVERABILITY: If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.
[20.2.300.8 NMAC - N, 01/01/11]

20.2.300.9 CONSTRUCTION: This part shall be liberally construed to carry out its purpose.
[20.2.300.9 NMAC - N, 01/01/11]

20.2.300.10 SAVINGS CLAUSE: Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.
[20.2.300.10 NMAC - N, 01/01/11]

20.2.300.11 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.
[20.2.300.11 NMAC - N, 01/01/11]

20.2.300.12 AVAILABILITY OF CITED DOCUMENTS: Copies of 40 CFR Section 98 may be viewed at the New Mexico environment department air quality bureau [located at 1301 Siler Road, Building B, Santa Fe NM 87507].
[20.2.300.12 NMAC - N, 01/01/11]

20.2.300.13 EMISSIONS REPORTS TO THE ENVIRONMENTAL PROTECTION AGENCY: On approval by the secretary, reports that conform to this part and that are submitted to the United States environmental protection agency shall be deemed to satisfy, in whole or in part, the requirement to submit a report under this part.
[20.2.300.13 NMAC - N, 01/01/11]

20.2.300.14 to 20.2.300.99 [RESERVED]

20.2.300.100 ADOPTION OF 40 CFR PART 98: Except as otherwise provided, the following subparts of 40 CFR Part 98, as amended in the federal register through October 28, 2010 (75 FR 66434), are hereby incorporated by reference.

A. 40 CFR Part 98 Subpart A - General Provisions, which includes Sections 98.1 through 98.8 and Tables A-1 through A-5 of Subpart A.

B. 40 CFR Part 98 Subpart C - General Stationary Fuel Combustion Sources, which includes Sections 98.30 through 98.38 and Tables C-1 and C-2 of Subpart C.

C. 40 CFR Part 98 Subpart D - Electricity Generation, which includes Sections 98.40 through 98.48.

D. 40 CFR Part 98 Subpart H - Cement Production, which includes Sections 98.80 through 98.88.

E. 40 CFR Part 98 Subpart P - Hydrogen Production, which includes Sections 98.160 through 98.168.

F. 40 CFR Part 98 Subpart R - Lead Production, which includes Sections 98.180 through 98.188.

G. 40 CFR Part 98 Subpart S - Lime Manufacturing, which includes Sections 98.190 through 98.198 and Table S-1 of Subpart S.

H. 40 CFR Part 98 Subpart V - Nitric Acid Production, which includes Sections 98.220 through 98.228.

I. 40 CFR Part 98 Subpart X - Petrochemical Production, which includes Sections 98.240 through 98.248.

J. 40 CFR Part 98 Subpart Y - Petroleum Refineries, which includes Sections 98.250 through 98.258.

K. 40 CFR Part 98 Subpart GG - Zinc Production, which includes Sections 98.330 through 98.338.

[20.2.300.100 NMAC - N, 01/01/11]

20.2.300.101 MODIFICATIONS, EXCEPTIONS AND OMISSIONS TO 40 CFR PART 98: Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporated 40 CFR Part 98.

A. Each reference to "25,000 metric tons CO2e" is modified to "10,000 metric tons CO2e".

B. Except as otherwise provided, each reference to "any calendar year starting in 2010" is modified to "any calendar year starting in 2011".

[20.2.300.101 NMAC - N, 01/01/11]

20.2.300.102 MODIFICATIONS, EXCEPTIONS AND OMISSIONS TO 40 CFR PART 98 SUBPART A - GENERAL PROVISIONS: Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporated 40 CFR Part 98 Subpart A - General Provisions.

A. In 98.1(a) and (b), references to "suppliers", "fossil fuel suppliers", and "industrial GHG suppliers" are omitted.

B. In 98.2(a), the phrase "located in the United States" is modified to "located in the geographic area within the jurisdiction of the environmental improvement board."

C. Paragraph 98.2(a)(1) is modified to read: A facility that contains, in any calendar year starting in 2011, any source category that is listed in Table A-3 of Subpart A of 40 CFR 98. For these facilities, the annual GHG report shall cover stationary fuel combustion sources (subpart C) and all applicable source categories listed in 20.2.300.100 NMAC and 20.2.300.107 NMAC.

D. Paragraph 98.2(a)(2) is modified to read: A facility containing any source category listed in 20.2.300.107 NMAC, or in both Table A-4 of 40 CFR 98 and 20.2.300.100 NMAC, that emits, in any calendar year starting in 2011, 10,000 metric tons CO2e or more in combined emissions from all applicable source categories listed in 20.2.300.100 NMAC and 20.2.300.107 NMAC. For these facilities, the annual GHG report shall cover all source categories and GHGs for which calculation methodologies are provided in 20.2.300 NMAC.

E. Paragraph 98.2(a)(3) is modified to read: A facility that in any calendar year starting in 2011 meets all three of the following conditions: (i) the facility does not meet the requirements of either paragraph (a)(1) or (a)(2) of this section; (ii) the aggregate maximum rated heat input capacity of the stationary fuel combustion units at the facility is 12 mmBtu/hr or greater; and, (iii) the facility emits 10,000 metric tons CO2e or more per year in combined emissions from all stationary fuel combustion sources. For these facilities, the annual GHG report must cover emissions from stationary fuel combustion sources only.

F. In Table A-3 of Subpart A (relating to applicable source categories), the following source categories are omitted: adipic acid production, aluminum production, ammonia manufacturing, HCFC-22 production, HFC-23 destruction processes, phosphoric acid production, silicon carbide production, soda ash production, titanium dioxide production, municipal solid waste landfills, manure management systems, underground coal mines, and any other source category added after November 1, 2009.

G. In Table A-4 of Subpart A (relating to applicable source categories), the following source categories are omitted: ferroalloy production, glass production, iron and steel production, pulp and paper manufacturing, magnesium production, industrial wastewater treatment, industrial waste landfills, and any other source category added after November 1, 2009.

H. Subsection 98.2(a)(4) (relating to fuel suppliers and industrial greenhouse gas suppliers) is omitted.

I. Amend subsection 98.2(b)(2) as follows.

(1) Omit the sentence "Exclude carbon dioxide emissions from the combustion of biomass, but include emissions of CH4 and N2O from biomass combustion."

(2) Add the following subparagraph 98.2(b)(2)(i): "For stationary combustion units, carbon dioxide emissions from the combustion of biomass fuels shall be included in determining whether a facility is subject to the reporting requirements of 20.2.300 NMAC with the following exception: a maximum of 15,000 metric tons of carbon dioxide emissions from the combustion of pure solid biomass fuel may be excluded from calculation of GHG emissions for comparison to the 10,000 metric ton CO2e per year emission threshold in paragraph (a)(2) of this section, provided that total GHG emissions including emissions from solid biomass fuel are less than 25,000 metric tons CO2e."

(3) Add the following subparagraph 98.2(b)(2)(ii): "The exception in paragraph (b)(2)(i) of this section shall not apply in determining whether a facility is subject to the reporting requirements of 40 CFR Part 98."

J. Paragraph 98.2(b)(3) (regarding miscellaneous uses of carbonate) is omitted.

K. The introductory sentence of Paragraph 98.2(b)(4) is modified to: "Sum the emissions estimates from paragraphs (b)(1) and (b)(2) of this section for each GHG and calculate metric tons of CO2e using Equation A-1 of this section."

L. Subsections 98.2(d) through 98.2(f) (relating to fuel suppliers and importers and exporters of industrial greenhouse gases and CO2) are omitted.

M. Subsection 98.2(i) (relating to the discontinuation of reporting requirements for facilities emitting less than the reporting threshold) is modified as follows.

(1) Paragraph 98.2(i)(1) is omitted.

(2) Paragraph 98.2(i)(2) is modified to: "If the operations of a facility change such that emissions fall below 10,000 metric tons CO2e per year, then the following reporting requirements shall apply.

(a) If, prior to the emission reduction, the facility was required to report under 20.2.300 NMAC and to verify emissions under 20.2.301 NMAC, then the owner or operator shall continue to submit emission reports until reported emissions are below 10,000 metric tons CO2e per year for a minimum of three consecutive years. If reported emissions are less than 10,000 metric tons CO2e per year for three consecutive years then the owner or operator may discontinue submissions of annual emissions reports required by this part, provided that the owner or operator submits a notification to the department that announces the cessation of reporting. The notification shall be submitted no later than March 31 of the year immediately following the third consecutive year of emissions less than 10,000 tons CO2e per year. The owner or operator shall maintain the corresponding records required under 40 CFR 98.3(g) for each of the three consecutive years and retain such records for three years following the year that reporting was discontinued. The owner or operator shall resume reporting if annual emissions in any future calendar year increase to 10,000 metric tons CO2e per year or more.

(b) If, prior to the emission reduction, the facility was required to report under 20.2.300 NMAC but was not required to verify emissions under 20.2.301 NMAC, then in lieu of submitting a report otherwise specified by this part, the owner or operator shall submit to the department a signed statement certifying that emissions were less than 10,000 metric tons CO2e during the prior year. After certifying that emissions are below 10,000 metric tons CO2e per year for three consecutive years under this paragraph, the owner or operator shall be exempted from further reporting until CO2e emissions again exceed 10,000 metric tons in any future calendar year."

(3) In Paragraph 98.2(i)(3) the reference to "supplier" is omitted.

N. In Subsection 98.3(b), the phrase "or supplier" is omitted, and references to the years 2010 and 2011 are changed to 2011 and 2012, respectively.

O. In 98.3(c)(4)(i) through (iii), modify the phrase "listed in Table A-3 and Table A-4 of this subpart" to "all applicable source categories in the 40 CFR 98 Subparts listed in Subsections B through K of 20.2.300.100 NMAC, and in 20.2.300.107 NMAC."

P. 98.3(c)(5) (relating to content of annual report for fuel suppliers and industrial greenhouse gas suppliers) is omitted.

Q. 98.3(c)(9) is modified to: "A signed and dated certification statement."

(1) For facilities required to report to EPA under 40 CFR 98, the certification statement shall be signed and provided by the designated representative of the owner or operator, who shall be the same individual recognized as the designated representative or alternate designated representative by EPA. The certification statement submitted to the the department shall follow the requirements of 40 CFR 98.4(e)(1).

(2) For facilities not required to report to EPA under 40 CFR 98, the certification statement shall be signed by the owner, operator or authorized representative and shall certify, to the best of his or her knowledge, the truth of all information in the report.

R. Section 98.3(d) (special provisions for reporting year 2010) is replaced as follows: "Abbreviated emissions report for facilities containing only general stationary fuel combustion sources and emitting less than 25,000 metric tons CO2e per year, exclusive of reporting-only emissions.

(1) An owner or operator that is otherwise subject to the requirements of this part may submit an abbreviated emissions report in lieu of the report required by 40 CFR 98.3(c) if all of the following apply:

(a) total emissions exclusive of reporting-only emissions are less than 25,000 metric tons CO2e;

(b) no emissions are required to be reported by this part other than those required to be reported by 40 CFR 98 Subpart C-General Stationary Fuel Combustion, as incorporated in this part with modifications in 20.2.300.103 NMAC, including CO2 from combustion of biomass-derived fuels;

(c) the facility is not required to report greenhouse gas emissions to the US EPA under 40 CFR 98; and

(d) the facility emissions report is not subject to verification requirements under 20.2.301 NMAC

(2) The abbreviated report shall contain the following information:

(a) facility, operating or construction permit number or notice of intent number, and physical street address including the city, state and zip code, or geographical location if not at a street address;

(b) the year and months covered by the report;

(c) date of submittal;

(d) total facility GHG emissions aggregated for all stationary fuel combustion units calculated according to any method specified in 40 CFR 98.33(a) and expressed in metric tons of total CO2, CO2 from biomass fuels, CH4, N2O, and CO2e;

(e) identification of the methods used to determine emissions;

(f) any facility operating data or process information used for the GHG emission calculations;

(g) a signed and dated certification statement provided by the designated representative of the owner or operator, according to the requirements 40 CFR 98.3(c)(9) as modified in Subsection Q of this section; and

(h) for facilities with on-site electricity generation or cogeneration, the information specified in Paragraphs (1) and (2) of Subsection D of 20.2.300.103 NMAC."

S. Section 98.3(f) after the heading (Verification) is modified as follows: Owner or operators subject to the verification requirements of 20.2.301 NMAC shall obtain verification services and submit a verification statement meeting the requirements of 20.2.301 NMAC, if applicable.

T. Section 98.3(g) (Recordkeeping) is modified as follows:

(1) records shall be retained for at least seven years;

(2) the records required under this section shall be made available to the department within twenty days after the request;

(3) the introductory phrase of 40 CFR 98.3(g)(5) is modified to: "For sources subject to reporting under 40 CFR Part 98, a written GHG monitoring plan"; and

(4) Subparagraph 98.3(g)(5)(iv) is modified to: "Upon request by the department, the owner or operator shall make all information that is collected in conformance with the GHG monitoring plan available for review during an audit within twenty days after the request; electronic storage of the information in the plan is permissible, provided that the information can be made available in hard copy upon request during an audit."

U. Section 98.3(h) is modified to consist of the heading "annual GHG report revisions" and the following subparagraphs.

(1) 98.3(h)(1): "The owner or operator of a facility subject to reporting under both 20.2.300 NMAC and 40 CFR Part 98 shall submit a revised report within 45 days of discovering or being notified by EPA of errors in an annual GHG report. The revised report must correct all identified errors. The owner or operator shall retain documentation for 7 years to support any revisions made to an annual GHG report."

(2) 98.3(h)(2): "The owner or operator of a facility subject to reporting under 20.2.300 NMAC but not 40 CFR Part 98 shall submit a revised report within 30 days of finding that a report contains an error, or accumulation of errors, greater than 5 percent of the total CO2e emissions reported. To the extent possible, the revised report must correct all identified errors. A revised report will be accepted only if approved by the department. The owner or operator shall retain documentation for 7 years to support any revisions made to an annual GHG report."

V. Section 98.3(i) (calibration accuracy requirements) is modified as follows.

(1) The dates "January 1, 2010" and "April 1, 2010" are modified to "January 1, 2011" and "April 1, 2011", respectively.

(2) All references to "suppliers" are omitted.

(3) Paragraph (i)(6) is modified to: "For units and processes that operate continuously with infrequent outages, it may not be possible to meet the April 1, 2011 deadline for the initial calibration of a flow meter or other measurement device without removing the device from service and shipping it to a remote location, thereby disrupting normal process operation. In such cases, the owner or operator may postpone the initial calibration until the next scheduled maintenance outage, and may similarly postpone the subsequent recalibrations. Such postponements shall be documented in the monitoring plan that is required under section 98.3(g)(5) and submitted before December 31, 2011 to the department for approval of any postponements of the initial calibration beyond that date."

W. The following subsections and paragraphs are added to Section 98.3.

(1) 98.3(j): "Where 20.2.300 NMAC requires sampling of a parameter on a more frequent basis than the corresponding rule in 40 CFR Part 98, the following shall apply unless in conflict with any other provision in 40 CFR Part 98."

(2) 98.3(j)(1): "The samples must be spaced apart as evenly as possible over time, taking into account the operating schedule of the relevant unit or facility."

(3) 98.3(j)(2): "The owner or operator shall calculate and report a weighted average of the values derived from

the samples by using equation 102-1:"

$$V_E = \frac{\sum_{j=1}^{n}(V_j \times M_j)}{\sum_{j=1}^{n} M_j} \qquad \text{Equation 102 - 1}$$

Where :
V_E = The value of the parameter to be reported under 40 CFR Part 98 for period E.
j = Each period during period E for which a sample is required by this part.
n = The number of periods j in period E.
V_j = The value of the sample for period j.
M_j = The mass of the sampled material processed or otherwise used by the relevant unit or facility in period j.

(4) 98.3(j)(3): "You must keep records of the date and result for each sample and mass measurement used in the equation in subsection (j)(2) and of the calculation of each weighted average included in your report."

(5) 98.3(k): "Where 20.2.300 NMAC specifies a choice between use of a fuel-based or mass balance-based calculation or use of a continuous emissions monitoring system (CEMS) to calculate GHG emissions, the owner or operator shall make this choice and continue to use the method chosen for all future emissions data reports, unless the use of the alternative calculation method is approved in advance by the department."

(6) 98.3(l): "The owner or operator may elect to designate as de minimis one or more sources or pollutants that collectively emit no more than 3 percent of the facility's total CO2e emissions, but not to exceed 20,000 metric tons CO2e. Where 20.2.300 NMAC otherwise requires the use of a more stringent method for monitoring and reporting emissions than the method required by 40 CFR Part 98, the owner or operator may elect to use any other method allowed under 40 CFR Part 98 for the sources or pollutants designated as de minimis."

(7) 98.3(m): "Notwithstanding the missing data procedures specified in 20.2.300 NMAC, the failure to conduct monitoring in accordance with 20.2.300 NMAC shall constitute a violation of this regulation."

X. Section 98.4 (authorization and responsibilities of the designated representative) is omitted.

Y. Table A-5 of Subpart A is omitted.

[20.2.300.102 NMAC - N, 01/01/11]

20.2.300.103 MODIFICATIONS, EXCEPTIONS AND OMISSIONS TO 40 CFR PART 98 SUBPART C - GENERAL STATIONARY FUEL COMBUSTION SOURCES: Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporated 40 CFR Part 98 Subpart C - General Stationary Fuel Combustion Sources.

A. Section 98.32 (GHGs to report) is modified as follows.

(1) 98.32(a): "You must report CO2, CH4, and N2O mass emissions from each stationary fuel combustion unit."

(2) 98.32(b): "Facilities that generate electricity either for sale or for use onsite shall also report fugitive HFC emissions from cooling units by following the requirements of 40 CFR 98.33(f) (added as Paragraphs (15) through (17) of Subsection B of this section).

B. Section 98.33 (Calculating GHG emissions) is modified as follows.

(1) Subparagraph 98.33(a)(2)(iii) is modified to: "For units that combust municipal solid waste (MSW) and that produce steam, use Equation C-2c of this section. Equation C-2c of this section may also be used for any solid biomass fuel listed in Table C-1 of this subpart provided that steam is generated by the unit." Equation C-2c is not modified.

(2) The first sentence of Subparagraph 98.33(a)(4)(iv) is modified to: "An oxygen (O2) concentration monitor may be used in lieu of a CO2 concentration monitor in a CEMS installed before January 1, 2011, to determine the hourly CO2 concentrations, in accordance with Equation F-14a or F-14b (as applicable) in appendix F to 40 CFR part 75, if the effluent gas stream monitored by the CEMS consists solely of combustion products (i.e., no process CO2 emissions are mixed with the combustion products) and if only fuels that are listed in Table 1 in section 3.3.5 of appendix F to 40 CFR part 75 are combusted in the unit."

(3) The following requirements are appended to Subparagraph 98.33(a)(4)(iv): "An operator without a CO2 monitor who uses a CEMS and O2 concentrations to calculate and report a unit's CO2 emissions, and who regularly conducts a relative accuracy test audit (RATA) for the unit, must include in the RATA at least annually the monitoring of CO2 concentration and flow, and the calculation of CO2 mass. The operator must retain these results and make them available to the department upon request.

(4) Subparagraph 98.33(b)(1)(i) is modified to: (The Tier 1 Calculation Methodology) may be used for any fuel listed in Table C-1 of this subpart that is combusted in a unit with a maximum rated heat input capacity of 250 mmBtu/hr or less at a facility that is not subject to verification under 20.2.301 NMAC, and may be used for any fuel listed in Table C-1a of this subpart that is combusted in a unit with a maximum rated heat input capacity of 250 mmBtu/hr or less at any facility.

(5) Subparagraph 98.33(b)(1)(iii) is modified to: (The Tier 1 Calculation Methodology) may be used for solid, gaseous, or liquid biomass fuels in a unit of any size provided that the fuel is listed in Table C-1 of this subpart and that the emissions are not cap emissions..

(6) Subparagraph 98.33(b)(1)(iv) is modified to: (The Tier 1 Calculation Methodology) may not be used if you routinely perform fuel sampling and analysis for the fuel high heat value (HHV) or routinely receive the results of HHV sampling and analysis from the fuel

supplier at the minimum frequency specified in 40 CFR 98.34(a), or at a greater frequency. In such cases, Tier 2 or a higher tier method shall be used.

(7) Subparagraph 98.33(b)(2)(i) is modified to: (The Tier 2 Calculation Methodology) may be used for the combustion of pipeline quality natural gas, or any fuel listed in Table C-1a of this subpart, in a unit with a maximum rated heat input capacity of 250 mmBtu/hr or less.

(8) Subparagraph 98.33(b)(2)(iii) is modified to: (The Tier 2 Calculation Methodology) may be used for MSW or solid biomass fuel in a unit of any size that produces steam, if Equation C-2c is employed and if the use of Tier 4 is not required.

(9) A new subparagraph 98.33(b)(2)(iv) is added: (The Tier 2 Calculation Methodology) may be used for the combustion of any fuel listed in Table C-1 at any facility that is not subject to 20.2.301 NMAC or to 40 CFR 98.

(10) Subparagraph 98.33(b)(3)(ii) is modified to: (The Tier 3 Calculation Methodology) shall be used for a unit with a maximum rated heat input capacity greater than 250 mmBtu/hr or that is located at a facility subject to verification under 20.2.301 NMAC, unless either of the following conditions apply: (A) the use of Tier 1 or Tier 2 is permitted, as described in paragraphs (b)(1) and (b)(2) of this section; or (B) the use of Tier 4 is required.

(11) Subparagraph 98.33(b)(3)(iii) is modified to: (The Tier 3 Calculation Methodology) shall be used for a fuel not listed in Table C-1 of this subpart provided that the use of Tier 4 is not required.

(12) The first sentence of subparagraph 98.33(e)(1) is modified to: "If CEMS are not used to measure CO2, use Equation C-1 or C-2c of this subpart to calculate the annual CO2 mass emissions from the combustion of biomass (except MSW) for a unit of any size."

(13) The last sentence of the introductory paragraph of subparagraph 98.33(e)(2) is modified to: "If MSW or a fossil fuel/biomass mixture containing an undeterminable quantity of fossil fuels is combusted in the unit, follow the procedures in 40 CFR 98.33(e)(3)."

(14) A new section 98.33(f) is added: "Calculating fugitive HFC emissions from cooling units. Owner or operators of electricity generating facilities shall calculate fugitive HFC emissions for each HFC compound used in cooling units that support power generation or are used in heat transfers to cool stack gases using either the methodology in paragraph (f)(1) or (f)(2). The owner or operator is not required to report GHG emissions from air or water cooling systems or condensers that do not contain HFCs."

(15) A new section 98.33(f)(1) is added: "Use Equation 103-1 to calculate annual HFC emissions."

$$HFC = HFC_I + HFC_{P/A} - HFC_{S/D} + HFC_{CC} \qquad \text{Equation 103 - 1}$$

Where:

HFC = Annual fugitive HFC emissions, metric tons.

HFC_I = The difference between the quantity of HFC in storage at the beginning of the year and quantity in storage at the end of the year. Stored HFC includes HFC contained in cylinders (such as 115 - pound storage cylinders, gas carts, and other storage containers. It does not include HFC gas held in operating equipment. The change in inventory will be negative if the quantity of HFC in storage increases over the course of the year.

$HFC_{P/A}$ = The sum of all HFC acquired from other entities during the year either in storage containers or in equipment.

$HFC_{S/D}$ = The sum of all the HFC sold or otherwise transferred offsite to other entities during the year either in storage containers or in equipment.

HFC_{CC} = The net change in the total nameplate capacity (i.e., the full and proper charge) of the cooling equipment. The net change in capacity will be negative if the total nameplate capacity at the end of the year is less than the total nameplate capacity at the beginning of the year.

(16) A new subparagraph 98.33(f)(2) is added: "Use service logs to document HFC usage and emissions from each cooling unit. Service logs should document all maintenance and service performed on the unit during the report year, including the quantity of HFCs added to or removed from the unit, and include a record at the beginning and end of each report year. The owner or operator may use service log information along with the following simplified material balance equations 103-2, 103-3, and 103-4 to quantify fugitive HFCs from unit installation, servicing, and retirement, as applicable. The owner or operator shall include the sum of HFC emissions from the applicable equations in the greenhouse gas emissions data report."

$$HFC_{INSTALL} = R_{NEW} - C_{NEW} \quad \text{Equation 103-2}$$

$$HFC_{SERVICE} = R_{RECHARGE} - R_{RECOVER} \quad \text{Equation 103-3}$$

$$HFC_{RETIRE} = C_{RETIRE} - R_{RETIRE} \quad \text{Equation 103-4}$$

Where :
$HFC_{INSTALL}$ = HFC emitted during initial charging/installation of the unit, kilograms.
$HFC_{SERVICE}$ = HFC emitted during use and servicing of the unit for the report year, kilograms.
HFC_{RETIRE} = HFC emitted during the removal from service/retirement of the unit, kilograms.
R_{NEW} = HFC used to fill new unit (omit if unit was precharged by the manufacturer), kilograms.
C_{NEW} = Nameplate capacity of new unit (omit if unit was precharged by the manufacturer, kilograms.
$R_{RECHARGE}$ = HFC used to recharge the unit during maintenance and service, kilograms.
$R_{RECOVER}$ = HFC recovered from the unit during maintenance and service, kilograms.
C_{RETIRE} = Nameplate capacity of the retired unit, kilograms.
R_{RETIRE} = HFC recovered from the retired unit, kilograms.

C. Section 98.34 (Monitoring and QA/QC requirements) is modified as follows. The following is added at the end of the introductory paragraph of 98.34(b)(3)(ii)(E): "For any refinery not defined as a small refinery in 40 CFR 80.1101(g), equipment necessary to perform daily sampling and analysis of carbon content and molecular weight for refinery fuel gas shall be installed no later than January 1, 2012. For any small refinery, as defined in 40 CFR 80.1101(g), with refinery fuel gas accounting for greater than 10% of the heat input, sampling and analysis of carbon content and molecular weight for refinery fuel gas shall be performed a minimum of three days per week in calendar year 2012 and the equipment necessary to perform daily sampling and analysis shall be installed no later than January 1, 2013."

D. Section 98.36 (Data reporting requirements) is modified as follows.

(1) A new section 98.36(b)(11) is added: "For units that generate electricity, nameplate generating capacity (MW) and net power generated (MWh) during the reporting year."

(2) A new section 98.36(b)(12) is added: "For each cogeneration unit, indicate whether topping or bottoming cycle and provide useful thermal output as applicable, in mmBtu. Where steam or heat is acquired from another facility for the generation of electricity, report the provider and amount of acquired steam or heat in mmBtu. Where supplemental firing has been applied to support electricity generation or industrial output, report this purpose and fuel consumption by fuel type using the following units: (i) for gases, report in units of million standard cubic feet; (ii) for liquids, report in units of gallons; (iii) for non-biomass solids, report in units of short tons; (iv) for biomass-derived solid fuels, report in units of bone dry short tons."

(3) In subsection 98.36(d) the following subparagraphs are added as follows.

(a) 98.36(d)(1)(iv): "Annual fuel consumption, if not reported under 40 CFR part 75. (A) For gases, report in units of thousands of standard cubic feet. (B) For liquids, report in units of gallons. (C) For non-biomass solids, report in units of short tons. (D) For biomass solid fuels, report in units of bone dry short tons."

(b) 98.36(d)(1)(v): "Average carbon content of each fuel, if used to compute CO2 emissions but not reported under 40 CFR part 75."

(c) 98.36(d)(1)(vi): "Average high heating value of each fuel, if used to compute CO2 emissions but not reported under 40 CFR part 75."

(d) 98.36(d)(1)(vii): "For units that burn both fossil fuels and biomass, the annual CO2 emissions from combustion of all fossil fuels combined and the annual CO2 emissions from combustion of all biomass fuels combined. Reporting CO2 emissions by type of fuel is not required."

(e) 98.36(d)(1)(viii): "For units that generate electricity, nameplate generating capacity (MW) and net power generated (MWh) during the reporting year."

(f) 98.36(d)(1)(ix): "For each cogeneration unit, indicate whether topping or bottoming cycle and provide useful thermal output as applicable, in mmBtu. Where steam or heat is acquired from another facility for the generation of electricity, report the provider and amount of acquired steam or heat in mmBtu. Where supplemental firing has been applied to support electricity generation or industrial output, report this purpose and fuel consumption by fuel type using the units in Paragraph (2) of Subsection D of 20.2.300.103 NMAC.

(g) 98.36(d)(2)(iv): "The information required in paragraphs (d)(1)(iv) through (d)(1)(ix) of 40 CFR 98.36 (added as Subparagraphs (a) through (f) of Paragraph 3 of Subsection D of 20.2.300.103 NMAC), as applicable.

(4) Subsection 98.36(e) is modified as follows.

(a) The introductory sentence of 98.36(e)(3) is modified to: "Within 20 days of receipt of a written request from the secretary, you shall submit explanations of the following:".

(b) The introductory sentence of 98.36(e)(4) is modified to: "Within 20 days of receipt of a written request from the secretary, you shall submit the verification data and information described in paragraphs (e)(2)(iii), (e)(2)(v), and (e)(2)(vii) of this section."

E. Section 98.38 (Definitions) is modified as follows.

(1) The introductory sentence is modified to read: "Except as specified in this section, all terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part (40 CFR 98)."

(2) The following definitions are added.

(a) "Bottoming cycle plant" means a cogeneration plant in which the energy input to the system is first applied to a useful thermal energy application or process, and at least some of the reject heat emerging from the application or process is then used for electricity

production.

(b) "Cogeneration unit" means a stationary fuel combustion device which simultaneously generates electrical and thermal energy that is (i) used by the owner or operator of the facility where the cogeneration unit is located; or (ii) transferred to another facility for use by that facility.

(c) "Cogeneration system" means individual cogeneration components including the prime mover (heat engine), generator, heat recovery, and electrical interconnection, configured into an integrated system that provides sequential generation of multiple forms of useful energy (usually electrical and thermal), at least one form of which the facility consumes on-site or makes available to other users for an end-use other than electricity generation.

(d) "Liquified petroleum gases (LPG)" means the mixture of hydrocarbon gases containing predominantly propane and smaller amounts of butane, propylene or other hydrocarbons, including standard grades such as HD-5, and sold commercially under the name "propane".

(e) "Pipeline quality natural gas" means natural gas having a high heat value greater than 970 Btu/scf and equal to or less than 1,100 Btu/scf, and which is at least ninety percent methane by volume and less than five percent carbon dioxide by volume.

(f) "Topping cycle plant" means a cogeneration plant in which the energy input to the plant is first used to produce electricity, and at least some of the reject heat from the electricity production process is then used to provide useful thermal output.

F. A new Table C-1a is added, as follows:

Table C-1a of Subpart C—Fuels for which Tier 1 or Tier 2 Calculation Methodologies May Be Used

Fuel Type	Default High Heat Value	Default CO2 Emission Factor
Petroleum Products	mmBtu/gallon	kg CO2 /mmBtu
Distillate Fuel Oil No. 1	0.139	73.25
Distillate Fuel Oil No. 2	0.138	73.96
Distillate Fuel Oil No. 4	0.146	75.04
Kerosene	0.135	75.20
Liquefied petroleum gases (LPG)	0.092	62.98
Propane	0.091	61.46
Propylene	0.091	65.95
Ethane	0.096	62.64
Ethylene	0.100	67.43
Isobutane	0.097	64.91
Isobutylene	0.103	67.74
Butane	0.101	65.15
Butylene	0.103	67.73
Natural Gasoline	0.110	66.83
Motor Gasoline	0.125	70.22
Aviation Gasoline	0.120	69.25
Kerosene-Type Jet Fuel	0.135	72.22

[20.2.300.103 NMAC - N, 01/01/11]

20.2.300.104 MODIFICATIONS, EXCEPTIONS AND OMISSIONS TO 40 CFR PART 98 SUBPART D - ELECTRICITY GENERATION: Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporated 40 CFR Part 98 Subpart D - Electricity Generation. Section 98.46 (Data reporting requirements) is modified to: "The annual report shall comply with the data reporting requirements specified in 40 CFR 98.36(d) and, if applicable, 40 CFR 98.36(c)(2) or (c)(3)."
[20.2.300.104 NMAC - N, 01/01/11]

20.2.300.105 MODIFICATIONS, EXCEPTIONS AND OMISSIONS TO 40 CFR PART 98 SUBPART P - HYDROGEN PRODUCTION: Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporated 40 CFR Part 98 Subpart P - Hydrogen Production.

A. Subsection 98.160(a) is modified to: "A hydrogen production source category consists of facilities that produce hydrogen gas for use onsite or sold as a product to other entities."

B. Section 98.163 (Calculating GHG emissions) is modified as follows.

(1) For Equation P-1 in Subsection 98.163(b)(1), the factor CCn is modified to mean: weighted average carbon content of the gaseous fuel and feedstock, from the results of one or more analyses for month n for natural gas or from daily analysis for gaseous feedstocks other than natural gas (kg carbon per kg of fuel and feedstock).

(2) For Equation P-2 in Subsection 98.163(b)(2), the factor CCn is modified to mean: weighted average carbon content of the liquid fuel and feedstock, from the results of daily sampling for month n (kg carbon per gallon of fuel and feedstock).

(3) For Equation P-3 in Subsection 98.163(b)(3):

(a) CO2 is modified to mean: annual CO2 emissions from fuel and feedstock consumption in metric tons per year (metric tons/yr); and

(b) the factor CCn is modified to mean: weighted average carbon content of the solid fuel and feedstock, from the results of daily sampling for month n (kg carbon per kg of fuel and feedstock).

C. Section 98.164 (Monitoring and QA/QC requirements) is modified as follows.

(1) Subparagraph 98.164(b)(2) is modified to: "Determine the carbon content and the molecular weight monthly for natural gas. For other gaseous fuels and feedstocks (e.g., biogas, refinery gas, or process gas), daily sampling and analysis is required to determine the carbon content and molecular weight of the fuel and feedstock."

(2) Subparagraph 98.164(b)(3) is modified to: "Determine the carbon content of fuel oil, naphtha, and other liquid fuels and feedstocks daily."

(3) Subparagraph 98.164(b)(4) is modified to: "Determine the carbon content of coal, coke, and other solid fuels and feedstocks daily."

D. Section 98.166 (Reporting data requirements) is modified as follows.

(1) Subparagraph 98.166(b)(5) is modified to: "Monthly or daily analyses of carbon content for each fuel and feedstock used in hydrogen production (kg carbon/kg of gaseous and solid fuels and feedstocks, (kg carbon per gallon of liquid fuels and feedstocks)."

(2) Subparagraph 98.166(b)(6) is modified to: "Monthly or daily analyses of the molecular weight of gaseous fuels and feedstocks (kg/kg-mole) used, if any."

(3) A new subparagraph 98.166(b)(7) is added: "Amount of carbon in unconverted feedstock for which GHG emissions are calculated and reported by your facility using other calculation methods provided in this regulation (metric tons CO2e/year). This would include, for example, carbon in waste diverted to a fuel system or flare, where the CO2 and CH4 emissions are calculated and reported using other methods provided in 20.2.300 NMAC."

[20.2.300.105 NMAC - N, 01/01/11]

20.2.300.106 MODIFICATIONS, EXCEPTIONS AND OMISSIONS TO 40 CFR PART 98 SUBPART Y - PETROLEUM REFINERIES: Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporated 40 CFR Part 98 Subpart Y - Petroleum Refineries.

A. Section 98.253 (Calculating GHG emissions) is modified as follows.

(1) In subsection (b)(1)(iii), the following subparagraphs are modified to read as follows.

(a) The introductory paragraph of subsection (b)(1)(iii): "Alternative Method for Startup, Shutdown, and Malfunctions. For startup, shutdown, and malfunctions during which you were unable to measure the parameters required by Equations Y-1 and Y-2 of this section, determine the quantity of gas discharged to the flare separately for each start-up, shutdown, or malfunction, and calculate the CO2 emissions as specified in paragraphs (b)(1)(iii)(A) and (b)(1)(iii)(C) of 40 CFR 98.253."

(b) Paragraph 98.253(b)(1)(iii)(A) is replaced as follows: "For periods of start-up, shutdown, or malfunction, use engineering calculations and process knowledge to estimate the carbon content of the flared gas for each start-up, shutdown, or malfunction event."

(c) Paragraph 98.253(b)(1)(iii)(B) is omitted.

(d) Equation Y-3 in section 98.253(b)(1)(iii)(C) is replaced with:

$$CO_2 = 0.98 \times 0.001 \times \left(\sum_{p=1}^{n} \left[\frac{44}{12} \times \left(Flare_{SSM} \right)_p \times \frac{\left(MW \right)_p}{MVC} \times \left(CC \right)_p \right] \right) \qquad \text{Equation 106-1}$$

(2) The introductory paragraph in subparagraph 98.253(c)(2) is modified to: "For catalytic cracking units and fluid coking units that do not use a continuous CO2 CEMS for the final exhaust stack, you must continuously or no less frequently than hourly monitor the O2, CO2, and (if necessary) CO concentrations in the exhaust stack from the catalytic cracking unit regenerator or fluid coking unit burner prior to the combustion of other fossil fuels and calculate the CO2 emissions according to the requirements of paragraphs (c)(2)(i) through (c)(2)(iii) of this section."

(3) Subparagraph 98.253(c)(3) is omitted.

(4) The following definitions for Equation Y-18 in section 98.253(i)(1) are modified as follows.

(a) fvoid: volumetric void fraction of coking vessel prior to steaming based on engineering calculations(cf gas/cf of vessel).

(b) MFCH4: average mole fraction of methane in coking vessel gas based on the analysis of at least two samples per year, collected at least four months apart (kg-mole CH4/kg-mole gas, wet basis).

(5) Section 98.253(k) is modified to read: "For uncontrolled blowdown systems, you must use the methods for process vents in paragraph (j) of 40 CFR 98.253."

B. Section 98.256 (Data reporting requirements) is modified as follows.

(1) Subparagraph 98.256(e)(8) is modified to: "If you use Equation 106-1 of Subsection A of 20.2.300.106 NMAC, the number of SSM events, and the volume of gas flared (in scf/event) and the average molecular weight (in kg/kg-mole) and carbon content of the flare gas (in kg carbon per kg flare) for each SSM event."

(2) Subparagraph 98.256(f)(9) is omitted.

(3) Subparagraph 98.256(m)(2) is modified to: "The information required for process vents in 40 CFR 98.256(l)."

(4) Subparagraph 98.256(m)(3) is omitted.

C. Section 98.257 (Records that must be retained) is modified as follows. A new section 98.257(b) is added: "For each process vent for which the concentration of CO2, N2O and CH4 are determined to be below the thresholds in 40 CFR 98.253(j), the owner or operator shall maintain records of the method used to determine the CO2, N2O, and CH4 concentration and all supporting documentation necessary to demonstrate the thresholds in 40 CFR 98.253(j) are not exceeded during the reporting year."

[20.2.300.106 NMAC - N, 01/01/11]

20.2.300.107 EMISSIONS FROM ACID GAS REMOVAL VENT STACKS: The owner or operator shall report any non-combustion emissions of carbon dioxide from acid gas removal vent stacks as described in this section.

A. Calculating CO2 emissions. For AGR (including but not limited to processes such as amine, membrane, molecular sieve or other absorbents and adsorbents), calculate emissions for CO2 using equation 107-1.

$$E_{a,CO2} = (V_1 \times \%Vol_1) - (V_2 \times \%Vol_2) \qquad \text{Equation 107-1}$$

Where:
$E_{a,CO2}$ = Annual volumetric CO2 emissions at ambient conditions, in cubic feet per year.
V_1 = Metered total annual volume of natural gas flow into AGR unit in cubic feet per year at ambient conditions.
$\%Vol_1$ = Volume weighted CO2 content of natural gas into the AGR unit.
V_2 = Metered total annual volume of natural gas flow out of the AGR unit in cubic feet per year at ambient conditions.
$\%Vol_2$ = Volume weighted CO2 content of natural gas out of the AGR unit.

(1) If a continuous gas analyzer is installed, then the continuous gas analyzer results must be used. If continuous gas analyzer is not available, quarterly gas samples must be taken to determine %Vol1 and %Vol2 according to methods set forth in Subsection B of this section.

(2) Calculate CO2 volumetric emissions at standard conditions using calculations in Subsection C of this section.

(3) Mass CO2 emissions shall be calculated from volumetric CO2 emissions using calculations in Subsections D and E of this section.

B. All flow meters, composition analyzers and pressure gauges that are used to provide data for the GHG emissions calculations shall use measurement methods, maintenance practices, and calibration methods, prior to the first reporting year and in each subsequent reporting year using an appropriate standard method published by a consensus standards organization such as, but not limited to, ASTM international, American national standards institute (ANSI), and American petroleum institute (API). If a consensus based standard is not available, you must use manufacturer instructions to calibrate the meters, analyzers, and pressure gauges.

C. Volumetric emissions. Calculate volumetric emissions at standard conditions as specified in Paragraphs (1) or (2) of this subsection.

(1) Calculate natural gas volumetric emissions at standard conditions by converting ambient temperature and pressure of natural gas emissions to standard temperature and pressure natural gas using equation 107-2.

$$E_{s,n} = \frac{E_{a,n} \times (460 + T_s) \times P_a}{(460 + T_a) \times P_s} \qquad \text{Equation 107-2}$$

Where:
$E_{s,n}$ = Natural gas volumetric emissions at standard temperature and pressure (STP) conditions.
$E_{a,n}$ = Natural gas volumetric emissions at ambient conditions.
T_s = Temperature at standard conditions (degrees Fahrenheit).
T_a = Temperature at actual emission conditions (degrees Fahrenheit).
P_s = Absolute pressure at standard conditions (inches of mercury).
P_a = Absolute pressure at ambient conditions (inches of mercury).

$$E_{s,n} = \frac{E_{a,n} \times (460 + T_s) \times P_a}{(460 + T_a) \times P_s} \qquad \text{Equation 107-2}$$

Where:
$E_{s,n}$ = Natural gas volumetric emissions at standard temperature and pressure (STP) conditions.
$E_{a,n}$ = Natural gas volumetric emissions at ambient conditions.
T_s = Temperature at standard conditions (degrees Fahrenheit).
T_a = Temperature at actual emission conditions (degrees Fahrenheit).
P_s = Absolute pressure at standard conditions (inches of mercury).
P_a = Absolute pressure at ambient conditions (inches of mercury).

(2) Calculate GHG volumetric emissions at standard conditions by converting ambient temperature and pressure of GHG emissions to standard temperature and pressure using equation 107-3.

$$E_{s,i} = \frac{E_{a,i} \times (460 + T_s) \times P_a}{(460 + T_a) \times P_s}$$ Equation 107-3

Where:
$E_{s,i}$ = GHG i volumetric emissions at standard temperature and pressure (STP) conditions.
$E_{a,i}$ = GHG i volumetric emissions at actual conditions.
T_s = Temperature at standard conditions (degrees Fahrenheit).
T_a = Temperature at actual emission conditions (degrees Fahrenheit).
P_s = Absolute pressure at standard conditions (inches of mercury).
P_a = Absolute pressure at ambient conditions (inches of mercury).

D. CO2 volumetric emissions. Calculate CO2 volumetric emissions at standard conditions as specified in paragraphs 1 and 2 of this section.

(1) Estimate CO2 emissions from natural gas emissions using Equation 107-4.

$$E_{s,CO2} = E_{s,n} \times M_{CO2}$$ Equation 107-4

Where:
$E_{s,CO2}$ = CO2 volumetric emissions at standard conditions.
$E_{s,n}$ = Natural gas volumetric emissions at standard conditions.
M_{CO2} = Mole percent of CO2 in the natural gas.

(2) For Equation 107-4 of this section, the mole percent of carbon dioxide, MCO2, shall be the annual average mole percent of carbon dioxide in feed natural gas for all emissions sources upstream of the de-methanizer and CO2 mole percent in facility specific residue gas to transmission pipeline systems for all emissions sources downstream of the de-methanizer overhead for onshore natural gas processing facilities. If you have a continuous gas composition analyzer on feed natural gas, you must use these values in calculating emissions. If you do not have a continuous gas composition analyzer, then quarterly samples must be taken according to methods set forth in Subsection B of this section.

E. CO2 mass emissions. Calculate CO2 mass emissions in carbon dioxide equivalent at standard conditions by converting the CO2 volumetric emissions into mass emissions using Equation 107-5 of this section.

$$Mass_{s,CO2} = E_{s,CO2} \times \rho_{CO2} \times GWP \times 10^{-3}$$ Equation 107-5

Where:
$Mass_{s,CO2}$ = CO2 mass emissions at standard conditions in metric tons CO2e.
$E_{s,CO2}$ = CO2 volumetric emissions at standard conditions, in cubic feet.
ρ_{CO2} = Density of CO2, 0.053 kilograms per cubic foot.
GWP = Global warming potential, 1 for CO2.

F. Procedures for estimating missing data. A complete record of all estimated and/or measured parameters used in the GHG emissions calculations is required. If data are lost or an error occurs during annual emissions estimation or measurements, you must repeat the estimation or measurement activity for those sources as soon as possible, including in the subsequent reporting year if missing data are not discovered until after December 31 of the reporting year, until valid data for reporting is obtained. Data developed and/or collected in a subsequent reporting year to substitute for missing data cannot be used for that subsequent year's emissions estimation. Where missing data procedures are used for the previous year, at least 30 days must separate emissions estimation or measurements for the previous year and emissions estimation or meausrements for the current year of data collection.

G. Data reporting requirements. In addition to the information required by 40 CFR 98.3(c), the owner or operator of each natural gas processing shall include in each annual report the following information for each acid gas removal unit:

(1) total volume of natural gas flow into the acid gas removal unit;

(2) total volume of natural gas flow out of the acid gas removal unit;

(3) volume weighted CO2 content of natural gas into the acid gas removal unit; and

(4) minimum, maximum and average throughput for the acid gas removal unit.

H. Records to be retained. In addition to the information required by 40 CFR 98.3(g), the owner or operator shall retain the following records:

(1) dates on which measurements were conducted;

(2) results of all emissions detected and measurements;

(3) calibration reports for detection and measurement instruments used; and

(4) inputs and outputs of calculations or emissions computer model runs used for engineering estimation of emissions.

[20.2.300.107 NMAC - N, 01/01/11]

HISTORY OF 20.2.300 NMAC: [RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 301 GREENHOUSE GAS REPORTING - VERIFICATION REQUIREMENTS

20.2.301.1 ISSUING AGENCY: Environmental Improvement Board.
[20.2.301.1 NMAC - N, 01/01/11]

20.2.301.2 SCOPE: All persons who own or operate an applicable source of greenhouse gas emissions in the geographic areas within the jurisdiction of the environmental improvement board, and all persons providing verification services for greenhouse gas emissions reports submitted to the department.
[20.2.301.2 NMAC - N, 01/01/11]

20.2.301.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically Sections 74-2-5(B)(1) & 74-2-(5)(C)(5)(d) & (e).
[20.2.301.3 NMAC - N, 01/01/11]

20.2.301.4 DURATION: Permanent.
[20.2.301.4 NMAC - N, 01/01/11]

20.2.301.5 EFFECTIVE DATE: January 1, 2011 except where a later date is cited at the end of a section.
[20.2.301.5 NMAC - N, 01/01/11]

20.2.301.6 OBJECTIVE: The objective of this part is to establish requirements for the verification of annual reports of greenhouse gas emissions to the department.
[20.2.301.6 NMAC - N, 01/01/11]

20.2.301.7 DEFINITIONS: The definitions included in 20.2.300 NMAC shall apply to the terms used in this part. The definitions included in 20.2.2 NMAC shall apply to the terms used in this part, unless such term is defined in 20.2.300 NMAC or in this part.

A. "Adverse verification statement" means a verification statement rendered by a verification body stating that the verification body cannot conclude that there is a reasonable level of assurance for an emissions data report.

B. "Conflict of interest" means a situation in which, because of financial or other activities or relationships with other persons or organizations, a person or body is unable or potentially unable to render an impartial verification opinion of a potential client's greenhouse gas emissions, or the person or body's objectivity in performing verification services is or might be otherwise compromised.

C. "Data check" means an independent calculation or checking of data conducted by a verifier to recreate the emissions for a discreet source included in an emissions data report.

D. "Full verification" means all verification services as provided in 20.2.301.101 NMAC.

E. "Independent Peer Reviewer" means a lead verifier within a verification body who has not participated in conducting verification services for the current reporting year who provides an independent review of verification services rendered as required in 20.2.101.116 NMAC.

F. "ISO" means the international organization for standardization.

G. "Less Intensive Verification" means the verification services provided in interim years between full verifications; less intensive verification only requires risk assessment and data checks on an owner or operator's emissions data report based on the most current sampling plan developed as part of the most current full verification services. This level of verification may only be used if the verifier can provide findings with a reasonable level of assurance.

H. "Material misstatement" means an error or omission, or a collection of errors or omissions, that results in a determination that a verification statement contains a material misstatement under subsection A of 20.2.301.115 NMAC.

I. "Positive verification statement" means a verification statement rendered by a verification body stating that the verification body can say with reasonable assurance that the submitted emissions data report is free of material misstatement and that the emissions data report conforms to the requirements of 20.2.300 NMAC and 20.2.301 NMAC.

J. "Reasonable level of assurance" for an emissions data report means the report satisfies Subsection A of 20.2.301.101 NMAC.

K. "Verification" means a systematic, independent and documented process for the evaluation of an owner's or operator's emissions data report against the reporting procedures and methods for calculating and reporting GHG emissions in 20.2.300 NMAC.

L. "Verification body" means a firm, accredited by the accreditation body, that is able to render a verification statement and provide verification services for owners and operators subject to reporting under 20.2.300 NMAC.

M. "Verification cycle" means three years of verification activities. Each verification cycle must include at least one year of full verification, and may include two years of less intensive verification, if eligible.

N. "Verification services" means services provided during verification as specified in this part, including but not limited to reviewing an owner's or operator's emissions data report, verifying its accuracy according to the standards specified in 20.2.300 NMAC, assessing the owner's or operator's compliance with this rule, and submitting a verification opinion to the department.

O. "Verification statement" means the final written declaration rendered by a verification body attesting whether an owner's or operator's emissions data report is free of material misstatement and whether the emissions data report conforms to the requirements of 20.2.300 NMAC.

P. "Verification team" means all of those working for a verification body, including all subcontractors, to provide verification services for an owner or operator.

Q. "Verifier" means an individual employed or contracted by an accredited verification body who has been deemed competent by the verification body to carry out verification services as specified in 20.2.301 NMAC.
[20.2.301.7 NMAC - N, 01/01/11]

20.2.301.8 SEVERABILITY: If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.
[20.2.301.8 NMAC - N, 01/01/11]

20.2.301.9 CONSTRUCTION: This part shall be liberally construed to carry out its purpose.
[20.2.301.9 NMAC - N, 01/01/11]

20.2.301.10 SAVINGS CLAUSE: Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.
[20.2.301.10 NMAC - N, 01/01/11]

20.2.301.11 COMPLIANCE WITH OTHER REGULATIONS: Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.
[20.2.301.11 NMAC - N, 01/01/11]

20.2.301.12 to 20.2.301.99 [RESERVED]

20.2.301.100 APPLICABILITY AND SCOPE OF VERIFICATION REQUIREMENTS:

A. GHG emissions specified as reporting-only in 20.2.300 NMAC shall not be counted in total emissions for determining whether the thresholds in this section have been met or exceeded.

B. Except as provided in Subsections C through H of this section, owners or operators are required to obtain annual verification for a facility that in 2011 or any calendar year thereafter emits 25,000 metric tons CO2e or more per year in combined emissions from one or more of the source categories specified in 20.2.300 NMAC.

C. When the operation of a facility subject to the requirements of this section is changed such that the owner or operator has reported less than 25,000 metric tons of CO2e emissions for a calendar year, the owner or operator shall obtain verification of annual emissions reports for no less than three subsequent calendar years. If CO2e emissions of a facility subject to the requirements of this section again exceed 25,000 metric tons in any calendar year the provisions of Subsection B of this section apply.

D. Carbon dioxide emissions from the combustion of biomass fuels shall be included in the determination regarding verification applicability, with the following exception: a maximum of 15,000 metric tons of carbon dioxide emissions from the combustion of pure solid biomass fuel may be excluded from calculation of GHG emissions for comparison to the 25,000 metric ton CO2e per year verification threshold in Subsection A of this section.

E. Notwithstanding Subsections C and D of this section, any facility for which any emissions for that year are subject to an obligation to surrender compliance instruments under 20.2.350.301 NMAC shall obtain verification of reported annual emissions, exclusive of reporting-only emissions as specified in 20.2.300 NMAC.

F. Owners or operators may exclude from the scope of verification the GHG emissions specified as reporting-only in 20.2.300 NMAC.

G. Owners or operators of any facility not required to obtain annual verification as specified in this section may voluntarily obtain verification of their emissions report under this part, provided that all reporting requirements in 20.2.300 NMAC are also met.

H. In the event that 20.2.350 NMAC is sunset under 20.2.350.15 NMAC, no owner or operator of any facility shall be required under this section to obtain annual verification.
[20.2.301.100 NMAC - N, 01/01/11]

20.2.301.101 REQUIREMENTS FOR ANNUAL VERIFICATION OF EMISSIONS DATA REPORTS:

A. Verification bodies shall conduct verification processes and design verification procedures to determine whether there is a reasonable level of assurance for each separate emissions data report every year of the verification cycle. The verification team shall find that there is a reasonable level of assurance for an emissions data report only if the report:

(1) contains no material misstatement; and

(2) considering the criteria specified in 20.2.301.115 NMAC, conforms to the requirements of 20.2.300 NMAC.

B. The verification body must provide verification services in compliance with this part.

C. Facility owners or operators required to obtain annual verification shall be subject to full verification requirements in the first year that verification is required for an emissions data report. Upon completion of a positive verification statement under full verification requirements, the facility owner or operator may be eligible for two years of less intensive verification services as defined in 20.2.300.7 NMAC. This cycle may be repeated in subsequent three-year cycles; however, full verification requirements shall apply at least once every three years.

D. Facility owners or operators required to obtain annual verification shall obtain full verification services if any of the following apply:

(1) there has been change in the verification body from the previous year; or

(2) a verification body issued an adverse verification statement for that facility's previous year's emissions data report.

E. Owners or operators of any facility required to obtain, or voluntarily obtaining, verification of their emissions report in compliance with this part shall complete the verification process and submit the verification report to the department no later than September 1 of the year following the calendar year in which the emissions occurred.
[20.2.301.101 NMAC - N, 01/01/11]

20.2.301.102 ACCREDITATION REQUIREMENTS FOR VERIFICATION BODIES:

A. The accreditation requirements specified in this section shall apply to all verification bodies providing verification services under this rule.

B. A verification body shall be qualified to conduct verification services for the emissions reports submitted to the department as required by 20.2.300 NMAC only if:

(1) the verification body has submitted to the department within the previous three years a certification that it has knowledge and understanding of the reporting requirements in 20.2.300 NMAC; and

(2) it is accredited to ISO 14065 through a program developed under ISO 17011 by an accreditation body that is a member of the international accreditation forum, inc.

C. Prior to January 1, 2013, accreditation by the California air resources board under Title 17, California Code of Regulation, Section 95132, may be substituted for the accreditation required under Paragraph (2) of Subsection B of this section.
[20.2.301.102 NMAC - N, 01/01/11]

20.2.301.103 REQUIREMENTS FOR VERIFICATION SERVICES: The following verification services must be provided for each emissions data report.

A. As part of the verification services, the verification team shall review documents submitted, assess risks of a material misstatement, develop a verification plan (that includes a sampling plan), evaluate the emissions data report against the verification requirements, and assess the materiality of errors, omissions and misstatements identified.

B. The verification team shall request any information and documents needed for verification services. Such information shall include, but is not limited to, original records and supporting data for the emissions data report.
[20.2.301.103 NMAC - N, 01/01/11]

20.2.301.104 COMPOSITION OF VERIFICATION TEAM: A verification team must include the following:

A. a lead verifier;

B. an independent peer reviewer; and

C. any subcontractor elected to provide verification services under 20.2.301.105 NMAC.
[20.2.301.104 NMAC - N, 01/01/11]

20.2.301.105 SUBCONTRACTING: The following requirements shall apply to any verification body that elects to

subcontract verification services.

A. The primary verification body must assume full legal responsibility for verification services performed by subcontracted verifiers or verification bodies.

B. A verification body or verifier acting as a subcontractor to the primary verification body will not further subcontract that same work to another firm or individual.

C. A verification body or verifier acting as a subcontractor is subject to all conflict of interest requirements in 20.2.301.107 NMAC.

D. A verification body or verifier acting as a subcontractor must be identified by the primary verification body as part of the verification team.

[20.2.301.105 NMAC - N, 01/01/11]

20.2.301.106 CONFLICT OF INTEREST SUBMITTAL REQUIREMENTS FOR ACCREDITED VERIFICATION BODIES: Before the start of any work related to providing verification services to an owner or operator, a verification body must first be authorized in writing by the department to provide verification services. To obtain authorization the verification body shall submit to the department a self-evaluation of the potential for any conflict of interest that the verification body, entities related to the verification body, and members of the verification team including subcontractors, may have with the owner or operator or their related entities for which it will perform verification services. For the purposes of this section, the term member refers to staff on the verification team, in the verification body and any subcontractors. The submittal shall include all of the following.

A. Identification of whether the potential for conflict of interest is high, low, or medium based on factors specified in this section.

B. An organizational chart of the business structure of the verification body, including its related entities and brief description of the primary work done by the verification body and related entities.

C. Identification of whether any member of the verification body, entities related to the verification body, or the verification team including subcontractors has previously provided verification services for the owner or operator or its related entities and, if so, the years in which such verification services were provided.

D. Identification of whether any member of the verification body, entities related to the verification body, or the verification team including subcontractors, has engaged in any non-verification services of any nature with the owner or operator or related entities, in any jurisdiction, during the previous three years. The verification body must also disclose any services listed under Subsections A through C of 20.2.301.107 NMAC it has provided to the owner or operator,within the time periods specified therein, except that work in designing, developing, implementing or maintaining an inventory of or information or data management system for greenhouse gases for the owner or operator shall be disclosed regardless of when the services were performed..

E. If non-verification services have previously been provided, the following information shall also be submitted: identification of the nature and location of the work performed for the owner or operator and whether the work is similar to the type of work to be performed during verification, such as emissions inventory auditing, energy efficiency, renewable energy, or other work with implications for the owner's or operator's greenhouse gas emissions or the accounting of greenhouse gas emissions or electricity transactions.

F. The nature of past or present relationships the verification body, entities related to the verification body, and members of the verification team including subcontractors have with the owner or operator or related entity including:

(1) instances when any member has performed work for the owner or operator;

(2) identification of whether work is currently being performed for the owner or operator and, if so, the nature of the work;

(3) whether any member has any contracts or other arrangements to perform work for the owner or operator or a related entity, or has a bid, proposal, prospectus, or negotiations pending for future work for the owner or operator or a related entity;

(4) identification of how much work was performed in each of the last three years, as a percentage of the verification body's total gross income for each of the last three years;

(5) identification of how much work related to greenhouse gases or electricity transactions was performed for the owner or operator or related entities in each of the last three years, as a percentage of the verification body's income for each of the last three years; and

(6) identification of how much work was performed by each subcontractor for the owner or operator in each of the last three years, as a percentage of each subcontractor's total gross income for each of the last three years.

G. Explanation of how the amount and nature of work previously performed is such that any member of the verification team's credibility and lack of bias should not be under question.

H. A list of names of the verification team members that will perform verification services for the owner or operator and a description of any instances of personal or family relationships with management or employees of the owner or operator that potentially represent a conflict of interest.

I. Identification of any other circumstances or relevant information known to the verification body or owner or operator that could result in a conflict of interest, or any situation where the appearance of impartiality could undermine confidence in the verification body's ability to assess the reported emissions.

[20.2.301.106 NMAC - N, 01/01/11]

20.2.301.107 CONFLICT OF INTEREST REQUIREMENTS FOR VERIFICATION BODIES: The conflict of interest provisions of this section shall apply to the verification body, entities related to the verification body, and the verification team accredited according to the requirements of 20.2.301 NMAC to perform verification services for GHG emissions reports to the department. Member for purposes of this section means any employee or subcontractor of the verification body or entities related to the verification body. Member also includes any individual with a majority equity share in the verification body or entities related to the verification body.

A. The potential for a conflict of interest shall be deemed to be high where:

(1) the verification body and owner or operator share any management staff or board of directors membership, or any of the management staff of the owner or operator have been employed by the verification body, or vice versa, within the previous three years; or

(2) within the previous three years, any member of the verification body, any entity related to the verification body, and the verification team has provided to the owner or operator any of the following non-verification services:

(a) designing, developing, implementing, or maintaining an inventory or information or data management system for facility greenhouse gases, or, where applicable, electricity transactions;

(b) developing greenhouse gas emission factors or other greenhouse gas-related engineering analysis;

(c) designing energy efficiency, renewable power, or other projects which explicitly identify greenhouse gas reductions as a benefit;

(d) preparing or producing greenhouse gas-related manuals, handbooks, or procedures specifically for the reporting facility;

(e) appraisal services of carbon or greenhouse gas liabilities or assets;

(f) brokering in, advising on, or assisting in any way in carbon or greenhouse gas-related markets;

(g) managing any health, environment or safety functions which explicitly identify greenhouse gas reductions as a benefit;

(h) bookkeeping or other services related to the accounting records or financial statements, unless those services have been limited to financial auditing;

(i) any service related to information systems, unless those systems will not be part of the verification process, and excluding third-party auditor or registration services;

(j) appraisal and valuation services, both tangible and intangible related to GHG emissions or reductions inventories;

(k) fairness opinions and contribution-in-kind reports in which the verification body has provided its opinion on the adequacy of consideration in a transaction, unless the resulting services shall not be part of the verification process;

(l) any actuarially oriented advisory service involving the determination of amounts recorded in financial statements and related accounts;

(m) any internal audit service of GHG emissions management systems that has been outsourced by the owner or operator that relates to the owner's or operator's internal accounting controls, financial systems or financial statements, unless no consulting or advice was provided as part of the audit;

(n) acting as a broker-dealer (registered or unregistered), promoter or underwriter on behalf of the owner or operator;

(o) any legal services related to GHG emissions; or

(p) expert services to the owner or operator or his or her legal representative for the purpose of advocating his or her interests in litigation or in a regulatory or administrative proceeding or investigation involving GHG emissions, unless providing only factual testimony.

(3) the reporting operation has offered inducements to the verification body, subcontractors or verification team members for a positive opinion;

(4) members of the verification body, verification team members, or subcontractors have been deterred from acting objectively or exercising professional skepticism by threats, actual or perceived, from the reporting operation.

(5) members of the verification body, verification team members, subcontractors or family of subcontractors or team members have a financial interest in the reporting operation or its operator.

B. The potential for a conflict of interest shall also be deemed to be high where any staff member of the verification body, entity related to the verification body, or the verification team has provided verification services for the owner or operator within the last three years, except within the time period in which the owner/operator is allowed to use the same verification body as specified in 20.2.301.122 NMAC. If a verification body or verification team member has been providing verification services for an owner or operator in a greenhouse gas reporting or reductions program other than one in the jurisdiction of the environmental improvement board within the past three years, those years of services will count towards the six consecutive year limit in this subsection.

C. The potential for a conflict of interest shall be deemed high where the independent peer reviewer for the verification team has provided verification or non-verification services for the owner or operator during the current reporting year.

D. The potential for a conflict of interest shall be deemed to be low where no potential for a conflict of interest is found under this section and any non-verification services provided by all members of the verification body and the verification team to the owner or operator within the last three years are valued at less than five percent of the verification body's revenue.

E. The verification body shall deem the potential for a conflict of interest to be medium if the potential for a conflict of interest is not deemed to be either low or high as specified in Subsections A through D of this section.

F. If a verification body deems the potential for conflict of interest to be medium and wishes to provide verification services for the owner or operator, then the verification body shall submit, in addition to the self-evaluation, a plan to avoid, neutralize, or mitigate the potential conflict of interest situation. At a minimum, the mitigation plan shall include:

(1) a demonstration that any individuals on the verification body or subcontractor staff with potential conflicts have been removed and insulated from the project;

(2) an explanation of any changes to the organizational structure or verification team, such as demonstration that any conflicted unit has been divested or moved into an independent entity or any conflicted subcontractor has been removed; and

(3) any other circumstances that specifically address other sources of potential conflict of interest, such as the timing, location, type or financial value of the services that created the potential conflict of interest.

G. Conflict of interest determinations. The department shall review the self-evaluation submitted by the verification body, and determine whether the verification body is authorized to perform verification services for the owner or operator.

(1) The department shall notify the verification body in writing when the conflict of interest evaluation information submitted under 20.2.301.106 NMAC is deemed complete. Within thirty days after deeming the evaluation information complete, the department shall determine whether the verification body is authorized to proceed with verification and shall so notify the verification body.

(2) If the department determines the verification body or any member of the verification team has any threats specified in Subsections A through C of this section, the department shall find a high potential conflict of interest and verification services may not proceed.

(3) If the department determines that there is a low potential conflict of interest, verification services may proceed.

(4) If the department determines that the verification body and verification team have a medium potential for a conflict of interest, the department shall evaluate the conflict of interest mitigation plan and may request additional information from the applicant to complete the determination. In determining whether verification services may proceed, the department may consider factors including, but not limited to, the nature of previous work performed, the current and past relationships between the verification body and its subcontractors with the owner or operator, and the cost of the verification services to be performed. If the department determines that these factors when considered in combination with the mitigation plan demonstrate a low level of potential conflict of interest, then the department will authorize the verification body to provide verification services.

(5) Notwithstanding other provisions of this section, any conflict of interest created by individual employee of the verification body or of the owner or operator of the reporting entity may be mitigated as specified in Subsection F of 20.2.301.107 NMAC, by describing in the mitigation plan how the individual will be isolated from the verification team and verification activity.

H. Monitoring conflict of interest situations.

(1) After commencement of verification services, the verification body shall monitor and immediately make full disclosure in writing to the department regarding any potential for a conflict of interest situation that arises. This disclosure shall include a description of actions that the verification body has taken or proposes to take to avoid, neutralize, or mitigate

the potential for a conflict of interest. The verification body may proceed with verification services while the department is evaluating this disclosure.

(2) The verification body shall monitor arrangements or relationships that may be present for a period of one year after the completion of verification services. During that period, within 30 days of any change in arrangements or relationships with the owner or operator for which the verification body has provided verification services that may create a medium or high threat of conflict of interest, the verification body shall notify the department of the change and provide a description of the nature of the change. The department will make a conflict of interest determination under Subsection G of this section.

(3) The verification body shall report to the department any changes in its organizational structure, including mergers, acquisitions, or divestitures that may have created a medium or high threat of conflict of interest for one year after completion of verification services within 30 days and submit an evaluation of how the change(s) impacts the potential for conflict of interest.

(4) The department may invalidate a verification finding if a medium or high threat of a conflict of interest has arisen for the verification body or any member of the verification team and, in the case of a medium threat, the threat has not been adequately mitigated. In such a case, the owner or operator shall be provided 180 days to have their emissions report verified by a different verification body.

(5) If the verification body or its subcontractor(s) are found to have violated the conflict of interest requirements of this section, the department may notify the accreditation body.

[20.2.301.107 NMAC - N, 01/01/11]

20.2.301.108 PRELIMINARY ACTIVITIES:

A. The verification team shall discuss with the owner or operator the scope and objective of the verification services and obtain information from the owner or operator necessary to develop a verification plan. Such information shall include but is not limited to:

(1) information to allow the verification team to develop a general understanding of facility or entity boundaries, operations, emissions sources, electricity transactions, as applicable;

(2) information about the data management system used to track GHG emissions, electricity transactions, and other required measurement data as applicable;

(3) information regarding the training or qualifications of personnel involved in developing the GHG emissions data report;

(4) description of the specific methodologies used to quantify and report GHG emissions, electricity transactions, and other required data as applicable;

(5) records of measured data related to emissions and operations for the prior and current period;

(6) inventory of sources and their associated emissions for the reporting period; and

(7) any prior verification reports, if applicable.

B. In developing the verification plan, the verifier shall:

(1) gain an understanding of the organization and the processes that emit greenhouse gases;

(2) conduct a risk assessment to evaluate inherent, control and detection risk;

(3) conduct preliminary analytical testing to identify anomalies in the data;

(4) conduct a sensitivity analysis to assess the relative contribution of each source in the inventory to the reported annual emissions; and

(5) consider any other relevant developments at the facility, in the regulations, or legal environment.

[20.2.301.108 NMAC - N, 01/01/11]

20.2.301.109 SAMPLING PLAN: As part of the verification procedures, the verification team shall develop a sampling plan that, when combined with the other verification procedures, provides sufficient and appropriate evidence to allow the verifier to arrive at a conclusion. The sampling plan shall be designed to achieve the specified verification objective.

A. The sampling plan shall consider:

(1) statistical versus non-statistical approaches;

(2) design of the sample, including the population characteristics;

(3) stratification (categorization of population into subgroups);

(4) emission weighted selection;

(5) sample size; and

(6) sample selection.

B. As relevant information becomes available during the course of verification activities, the verification team shall modify the sampling plan as necessary to address emerging potential issues of material misstatement or nonconformance with the requirements of this rule.

[20.2.301.109 NMAC - N, 01/01/11]

20.2.301.110 VERIFICATION PLAN:

A. Accounting for requirements set by this part, the verification plan shall document:

(1) the scope of the verification;

(2) the level of assurance;

(3) the verification standard;

(4) the verification criteria;

(5) the objectives of the verification;

(6) the timing of the verification, including site visits;

(7) the nature of the communications required;

(8) the resources required to conduct the verification, including the role of verification team members; and

(9) the nature, timing and extent of the verification procedures, including the sampling plan.

B. The verification body shall retain the verification plan in paper, electronic, or other format for a period of not less than seven years following the submission of each verification statement.

[20.2.301.110 NMAC - N, 01/01/11]

20.2.301.111 SITE VISITS: In years for which full verification services are required under Subsection C of 20.2.301.101 NMAC, at least one member of the verification team shall at a minimum make one onsite site visit to each facility for which an emissions data report is submitted. The verification team member(s) shall also conduct an onsite visit of the headquarters or other location of central data management, if different from the facility location. During the site visit, the verification team member(s) shall perform all of the following tasks.

A. Observe whether all sources at the site are represented in the emissions report as specified in 20.2.300 NMAC as applicable to the owner or operator.

B. Assess whether the source inventory is identified, categorized, and reported appropriately. Collect evidence as to explanations for data anomalies identified in the verification plan.

C. Understand the data trail used by the owner or operator to measure, quantify, and report greenhouse gas emissions and, when applicable, electricity transactions.

D. Understand and evaluate the associated data controls used by the owner to ensure the completeness and accuracy of the data.

[20.2.101.111 NMAC - N, 01/01/11]

20.2.301.112 AVAILABILITY OF INFORMATION AND DOCUMENTATION: Owners or operators shall make available to the verification team all information and documentation used to calculate and report emissions, electricity transactions, and other information required under 20.2.300 NMAC, as applicable.

[20.2.301.112 NMAC - N, 01/01/11]

20.2.301.113 DATA CHECKS: To determine the reliability of the submitted emissions data report, the verification team

shall use data checks as defined in 20.2.301.7 NMAC. The verification team shall conduct data checks throughout the verification process and shall focus first on the largest and most uncertain estimates of emissions and electricity transactions.

A. In establishing the verification plan, the verification team shall use professional judgment to determine the number of data checks required for the team to conclude with reasonable assurance whether the reported emissions are free of material misstatement and the emissions data report otherwise conforms to the requirements of this rule.

B. The verification team shall choose emissions sources for data checks based on their relative sizes and risks of material misstatement as indicated in the verification plan.

C. The verification team, through the conformance assessment, shall ensure that the appropriate methodologies and emission factors have been applied for the emissions sources for sampled data covered under 20.2.300 NMAC.

[20.2.301.113 NMAC - N, 01/01/11]

20.2.301.114 EMISSIONS DATA REPORT MODIFICATIONS: If as a result of review by the verification team and prior to completion of a verification statement the owner or operator chooses to make improvements or corrections to the submitted emissions data report, a revised emissions data report must be submitted to the department as specified by 20.2.301.117 NMAC. The owner or operator shall maintain documentation to support any revisions made to the initial emissions data report. Documentation for all emissions data report submittals shall be retained by the owner or operator for seven years pursuant to Subsection R of 20.2.300.102 NMAC.

[20.2.301.114 NMAC - N, 01/01/11]

20.2.301.115 MATERIALITY AND CONFORMANCE ASSESSMENT CRITERIA: The verifier shall determine if the annual emissions report is prepared in such a way that it satisfies Subsection A of 20.2.301.101 NMAC.

A. A verification team shall determine that an emission data report contains a material misstatement if either Paragraph (1) or (2) of this subsection is true.

(1) Based on the verification team's own determination of the level of emissions subject to verification based on the sampling plan, the verification team concludes that total reported emissions are less than 95 percent accurate using equation 301-1:

$$PA = 100 - (SOU / TRE \times 100) \qquad \text{Equation 301-1}$$

Where:
PA = Percent accuracy.
SOU = The net result of summing overstatements and understatements resulting from error, omissions and misreporting.
TRE = Total reported emissions.

(2) The individual or aggregate effect of one or more errors, omissions or misstatements identified in the course of verification make it probable that the judgment of a reasonable person regarding the total reported emissions would have been changed or influenced by the error, omission or misrepresentation.

B. To assess conformance with this rule the verification team shall review the methods and factors used to develop the emissions data report for adherence to the requirements of 20.2.300 NMAC.

C. The verification team shall keep a log of any issues identified in the course of verification activities that may affect determinations of material misstatement and nonconformance, and how those issues were resolved.

[20.2.301.115 NMAC - N, 01/01/11]

20.2.301.116 COMPLETION OF VERIFICATION: Completion of verification services shall include the following.

A. Verification statement. Upon completion of the verification services required by this part, the verification body shall complete a verification statement for each emissions data report, and provide that statement to the owner or operator and the department according to the schedule specified in Subsection E of 20.2.301.101 NMAC. Before that statement is completed, the verification body shall have the verification services and findings of the verification team independently reviewed and approved by an independent peer reviewer.

B. The verification body shall provide either a positive or adverse verification statement to the reporter and to the department based on its findings during the verification process.

C. The lead verifier in the verification team shall attest on the verification statement that the verification team has carried out all verification services as required by this rule, and the independent peer reviewer shall attest to his or her independent review on behalf of the verification body and his or her concurrence with the verification findings. If the independent peer reviewer does not determine that the verification team has carried out all verification services as required by the rule or if the independent peer reviewer rejects the verification team's findings, then the verification body cannot issue a positive verification statement.

D. The verification body shall provide to the owner or operator a detailed verification report. The verification report shall at minimum include the detailed comparison of the data checks with the submitted emissions data report, errors, omissions and misstatements identified during the course of the verification, any corrections made to the original annual emissions report as a result of the verification, and observations about the data management systems that are connected to the errors, omissions and misstatements identified, as well as any qualifying comments on findings during verification services. The detailed verification report shall be made available to the department upon request.

[20.2.301.116 NMAC - N, 01/01/11]

20.2.301.117 DISPUTE RESOLUTION: Prior to the verification body providing an adverse verification statement pursuant to Subsection B of 20.2.301.116 NMAC, the owner or operator shall be provided at least 21 days to modify the emissions data report to correct any material misstatement or nonconformance found by the verification team. The modified report and verification statement must

be submitted to the department before the applicable verification deadline, unless the owner or operator makes a request to the department as follows.

A. If the owner or operator and the verification body cannot reach agreement on modifications to the emissions data report that result in a positive verification statement, the owner or operator may petition the department to make a final decision as to the verifiability of the submitted emissions data report.

B. If the department determines that the emissions data report does not meet the standards and requirements specified in this article, the owner or operator shall have the opportunity to submit within 60 days of the date of this decision any emissions data report revisions that address the department's determination, for re-verification of the emissions data report. In re-verifying a revised emissions data report, the verification body and verification team shall be subject to the requirements in 20.2.301.117 NMAC through 20.2.301.119 NMAC.

C. Upon provision of the verification statement to the department, the emissions data report shall be considered final and no changes shall be made except as provided in 20.2.301.114 NMAC or 20.2.301.117 NMAC. All verification requirements of this rule shall be considered complete upon provision of the verification statement.

[20.2.301.117 NMAC - N, 01/01/11]

20.2.301.118 RESPONSIBILITY FOR INFORMING ACCREDITATION BODY OF DISPUTE: In addition to initiating the dispute resolution process specified in 20.2.301.117 NMAC, the owner or operator and verification body shall inform the applicable accreditation body specified in Paragraph (2) of Subsection B of 20.2.301.102 NMAC of the dispute.

[20.2.301.118 NMAC - N, 01/01/11]

20.2.301.119 VOIDING OF POSITIVE VERIFICATION STATEMENT: The department may make void the positive verification statement submitted by the verification body if:

A. the department finds a high level of conflict of interest existed between a verification body and an owner or operator; or

B. an emissions data report that received a positive verification statement fails an audit by the department, based on the materiality and conformance assessment criteria in 20.2.301.115 NMAC.

[20.2.301.119 NMAC - N, 01/01/11]

20.2.301.120 AVAILABILITY OF DATA: Upon request by the department, the owner or operator shall provide the data used to generate an emissions data report, including all data available to a verification body. The department may also review the full verification report given by the verification body to the owner or operator. The full verification report shall be provided to the department upon request.

[20.2.301.120 NMAC - N, 01/01/11]

20.2.301.121 VERIFICATION SERVICES AUDIT: Upon written notification by the department, the verification body shall make itself available for a verification services audit.

[20.2.301.121 NMAC - N, 01/01/11]

20.2.301.122 DURATION OF VERIFICATION SERVICES BY ONE VERIFICATION BODY: Facility owners or operators subject to annual verification shall not use the same verification body for a period of more than six consecutive years. If a facility owner or operator is required or elects to contract with another verification body, they may contract verification services from the previous verification body only after not using the previous verification body for at least three years. If a verification body or verification team member has been providing verification services for an owner or operator in a greenhouse gas reporting or reductions program other than the department's within the previous three years, those years of services will count towards the six consecutive year limit in this section.

[20.2.301.122 NMAC - N, 01/01/11]

20.2.301.123 ENFORCEMENT: The department may review, and for good cause, including unmitigated high conflict of interest, refuse to accept the verification report of a verification body. The department shall notify the accreditation body of the refusal and the reasons therefor. If a recognized verification body is suspended in any other mandatory or voluntary GHG reporting or trading program, verification reports from that verification body will not be accepted until that suspension ends. If a verification body has its accreditation revoked under any other mandatory or voluntary GHG reporting or trading program, verification reports from that verification body will no longer be accepted under this part until the verification body is reaccredited.

[20.2.301.123 NMAC - N, 01/01/11]

HISTORY OF 20.2.301 NMAC: [RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.70 NMAC, Sections 7, 9 and 300, effective 01/01/2011.

20.2.70.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part the following definitions shall apply.

A. "Acid rain source" has the meaning given to "affected source" in the regulations promulgated under Title IV of the federal act, and includes all sources subject to Title IV of the federal act.

B. "Affected programs" means all states, local air pollution control programs, and Indian tribes and pueblos, that are within 50 miles of the source.

C. "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N2), [~~carbon dioxide (CO2),~~] oxygen (O2), [~~methane~~] and ethane.

D. "Air pollution control equipment" means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

E. "Applicable requirement" means all of the following, as they apply to a Part 70 source or to an emissions unit at a Part 70 source (including requirements that have been promulgated or approved by the board or US EPA through rulemaking at the time of permit issuance but have future-effective compliance dates).

(1) Any standard or other requirement provided for in the New Mexico state implementation plan approved by US EPA, or promulgated by US EPA through rulemaking, under Title I of the federal act to implement the relevant requirements of the federal act, including any revisions to that plan promulgated in 40 CFR, Part 52.

(2) Any term or condition of any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the federal act, unless that term or condition is determined by the department to be no longer pertinent.

(3) Any standard or other

requirement under Section 111 of the federal act, including Section 111(d).

(4) Any standard or other requirement under Section 112 of the federal act, including any requirement concerning accident prevention under Section 112(r)(7) of the federal act.

(5) Any standard or other requirement of the acid rain program under Title IV of the federal act or the regulations promulgated thereunder.

(6) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the federal act.

(7) Any standard or other requirement governing solid waste incineration under Section 129 of the federal act.

(8) Any standard or other requirement for consumer and commercial products under Section 183(e) of the federal act.

(9) Any standard or other requirement for tank vessels under Section 183(f) of the federal act.

(10) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the administrator has determined that such requirements need not be contained in a Title V permit.

(11) Any national ambient air quality standard.

(12) Any increment or visibility requirement under Part C of Title I of the federal act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act.

(13) Any regulation adopted by the board pursuant to the New Mexico Air Quality Control Act, Section 74-2-5(B) NMSA 1978.

F. "CFR" means the Code of Federal Regulations.

G. "Draft permit" means a version of a permit which the department offers for public participation or affected program review.

H. "Emission limitation" means a requirement established by US EPA, the board, or the department, that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

I. "Emissions allowable under the permit" means:

(1) any state or federally enforceable permit term or condition that establishes an emission limit (including a work practice standard) requested by the applicant and approved by the department or determined at issuance or renewal to be required by an applicable requirement; or

(2) any federally enforceable emissions cap that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject.

J. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any air pollutant listed pursuant to Section 112(b) of the federal act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the federal act.

K. Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the New Mexico state implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.

L. "Final permit" means the version of an operating permit issued by the department that has met all review requirements of 20.2.70.400 NMAC - 20.2.70.499 NMAC.

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

N. "General permit" means an operating permit that meets the requirements of 20.2.70.303 NMAC.

O. "Greenhouse gas" for the purpose of this part is defined as the aggregate group of the following six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

[~~O~~]**P. "Hazardous air pollutant"** means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

[~~P~~]**Q. "Insignificant activities"** means those activities which have been listed by the department and approved by the administrator as insignificant on the basis of size, emissions or production rate.

[~~Q~~]**R. "Major source"** means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source belong to the same major group (i.e., all have the same two-digit code), as described in the standard industrial classification manual, 1987, and that is described in Paragraphs (1), (2) or (3) below.

(1) A major source under Section 112 of the federal act, which is defined as the following.

(a) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons or more per year of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the federal act, 25 or more tons per year of any combination of such hazardous air pollutants (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator), or such lesser quantity as the administrator may establish by rule. Notwithstanding the preceding sentence, hazardous emissions from any oil or gas exploration or production well (with its associated equipment) and hazardous emissions from any pipeline compressor or pump station shall not be aggregated with hazardous emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) For radionuclides, "major source" shall have the meaning specified by the administrator by rule.

(2) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 or more tons per year of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this paragraph, unless the source belongs to one of the following categories of stationary sources:

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

(b) kraft pulp mills;

(c) portland cement plants;

(d) primary zinc smelters;

(e) iron and steel mills;

(f) primary aluminum ore reduction plants;

(g) primary copper smelters;

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

(i) hydrofluoric, sulfuric, or nitric acid plants;

(j) petroleum refineries;

(k) lime plants;

(l) phosphate rock processing plants;

(m) coke oven batteries;

(n) sulfur recovery plants;

(o) carbon black plants (furnace process);

(p) primary lead smelters;

(q) fuel conversion plant;

(r) sintering plants;

(s) secondary metal production plants;

(t) chemical process plants;

(u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

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

(w) taconite ore processing plants;

(x) glass fiber processing plants;

(y) charcoal production plants;

(z) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

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

(3) A major stationary source as defined in Part D of Title I of the federal act, including:

(a) for ozone non-attainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons or more per year in areas classified as "serious," 25 tons or more per year in areas classified as "severe," and 10 tons or more per year in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the federal act, that requirements under Section 182(f) of the federal act do not apply;

(b) for ozone transport regions established pursuant to Section 184 of the federal act, sources with the potential to emit 50 tons or more per year of volatile organic compounds;

(c) for carbon monoxide non-attainment areas (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator, sources with the potential to emit 50 tons or more per year of carbon monoxide; and

(d) for particulate matter (PM10) non-attainment areas classified as "serious," sources with the potential to emit 70 tons or more per year of PM10.

[~~R~~]**S. "Operating permit"** or **"permit"** (unless the context suggests otherwise) means any permit or group of permits covering a source that is issued, renewed, modified or revised pursuant to this part.

[**S**]**T. "Operator"** means the person or persons responsible for the overall operation of a facility.

[~~T~~]**U. "Owner"** means the person or persons who own a facility or part of a facility.

[~~U~~]**V. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

[~~V~~]**W. "Part 70 source"** means any source subject to the permitting requirements of this part, as provided in 20.2.70.200 NMAC - 20.2.70.299 NMAC.

[~~W~~]**X. "Permit modification"** means a revision to an operating permit that meets the requirements of significant permit modifications, minor permit modifications, or administrative permit amendments, as defined in 20.2.70.404 NMAC.

[~~X~~]**Y. "Permittee"** means the owner, operator or responsible official at a permitted Part 70 source, as identified in any permit application or modification.

[~~Y~~]**Z. "Portable source"** means any plant that is mounted on any chassis or skids and which can be moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock, that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit. Portable sources may include sand and gravel plants, rock crushers, asphalt plants and concrete batch plants which meet this criteria.

[~~Z~~]**AA. "Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

[~~AA~~]**AB. "Proposed permit"** means the version of a permit that the department proposes to issue and forwards to the administrator for review in compliance with 20.2.70.402 NMAC.

[~~AB~~]**AC. "Regulated air pollutant"** means the following:

(1) nitrogen oxides, total suspended particulate matter, or any volatile organic compounds;

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

(3) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(4) any class I or II substance subject to any standard promulgated under or established by Title VI of the federal act; [~~or~~]

(5) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act, including Sections 112(g), (j), and (r), including the following;

(a) any pollutant subject to requirements under Section 112(j) of the federal act; if the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the federal act, any pollutant for which a subject source would be a major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the federal act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal act have been met, but only with respect to the individual source subject to a Section 112(g)(2) requirement[~~.~~]; or

(6) any other pollutant subject to regulation as defined in Subsection AL of this section.

[~~AC~~]**AD. "Renewal"** means the process by which a permit is reissued at the end of its term.

[~~AD~~]**AE. "Responsible official"** means one of the following.

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or b) the delegation of authority to such representative is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of US EPA).

(4) For an acid rain source: the designated representative (as defined in Section 402(26) of the federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned, and for any other purposes under 40 CFR, Part 70.

[~~AE~~]**AF. "Section 502(b)(10) changes"** are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

[~~AF~~]**AG. "Shutdown"** means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose.

[~~AG~~]**AH. "Solid waste incineration unit"** means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). The term "solid waste incineration unit" does not include:

(1) incinerators or other units required to have a permit under Section 3005 of the federal Solid Waste Disposal Act;

(2) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(3) qualifying small power production facilities, as defined in Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), or qualifying cogeneration facilities, as defined in Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or

(4) air curtain incinerators, provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations established by the administrator by rule.

[~~AH~~]**AI. "Startup"** means the setting into operation of any air pollution control equipment, process equipment or process for any purpose.

[~~AI~~]**AJ. "Stationary source"** or **"source"** means any building, structure, facility, or installation, or any combination thereof that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the federal act.

[~~AJ~~]**AK. "Subsidiary"** means a business concern which is owned or controlled by, or is a partner of, the applicant or permittee.

AL. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the act, or a nationally-applicable regulation codified by the administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "greenhouse gases" (GHGs) shall not be subject to regulation, unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year CO2 equivalent emissions;

(2) the term "tons per year CO2 equivalent emissions" (CO2e) shall represent the aggregate amount of GHGs emitted by the regulated activity, and shall be computed by multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials, and summing the resultant value for each gas;

(3) if a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in whole or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514, June 3, 2010), the definition "subject to regulation" shall be enforceable by the department only to the extent that it is enforceable by US EPA.

[~~AK~~**]AM. "Temporary source"** means any plant that is situated in one location for a period of less than one year, after which it will be dismantled and removed from its current site or relocated to a new site. A temporary source may be semi-permanent, which means that is does not have to meet the requirements of a portable source. Temporary sources may include well head compressors which meet this criteria.

[~~AL~~]**AN. "Title I modification"** means any modification under Sections 111 or 112 of the federal act and any physical change or change in method of operations that is subject to the preconstruction regulations promulgated under Parts C and D of the federal act.

[11/30/95; 20.2.70.7 NMAC - Rn, 20 NMAC 2.70.I.107, 06/14/02; A, 11/07/02; A, 9/6/06; A, 01/01/11]

20.2.70.9 DOCUMENTS: Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [~~2048 Galisteo Street, Santa Fe, NM 87505~~] 1301 Siler Rd., Bldg. B, Santa Fe, NM 87507.

[11/30/95; 20.2.70.9 NMAC - Rn, 20 NMAC 2.70.108 06/14/02; A, 01/01/11]

20.2.70.300 PERMIT APPLICATIONS:

A. Duty to apply. For each Part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this part.

B. Timely application. A timely application for a source applying for a permit under this part is:

(1) for first time applications, one that is submitted within twelve (12) months after the source commences operation as a Part 70 source[~~, or as established in the transition schedule outlined in Paragraph (4) of Subsection B of 20.2.70.300 NMAC~~];

(2) for purposes of permit renewal, one that is submitted at least twelve (12) months prior to the date of permit expiration;

(3) for the acid rain portion of permit applications for initial phase II acid rain sources under Title IV of the federal act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides;

C. Completeness of application.

(1) To be deemed complete, an application must provide all information required pursuant to Subsection D of 20.2.70.300 NMAC, except that applications for permit modifications need supply such information only if it is related to the proposed change.

(2) If, while processing an application, regardless of whether it has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

(3) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(4) The applicant's ability to operate without a permit, as set forth in Paragraph (2) of Subsection A of 20.2.70.201 NMAC, shall be in effect from the date a timely application is submitted until the final permit is issued or disapproved, provided that the applicant adequately submits any requested additional information by the deadline specified by the department.

D. Content of application. Any person seeking a permit under this part shall do so by filing a written application with

the department. The applicant shall submit three (3) copies of the permit application, or more, as requested by the department. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under 20.2.71 NMAC (operating permit emission fees). Fugitive emissions shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. All applications shall meet the following requirements.

(1) Be made on forms furnished by the department, which for the acid rain portions of permit applications and compliance plans shall be on nationally-standardized forms to the extent required by regulations promulgated under Title IV of the federal act.

(2) State the company's name and address (and, if different, plant name and address), together with the names and addresses of the owner(s), responsible official and the operator of the source, any subsidiaries or parent companies, the company's state of incorporation or principal registration to do business and corporate or partnership relationship to other permittees subject to this part, and the telephone numbers and names of the owners' agent(s) and the site contact(s) familiar with plant operations.

(3) State the date of the application.

(4) Include a description of the source's processes and products (by standard industrial classification code) including any associated with alternative scenarios identified by the applicant, and a map, such as the 7.5 minute topographic quadrangle map published by the United States geological survey or the most detailed map available showing the exact location of the source. The location shall be identified by latitude and longitude or by UTM coordinates.

(5) For all emissions of all air pollutants for which the source is major and all emissions of regulated air pollutants, provide all emissions information, calculations and computations for the source and for each emissions unit, except for insignificant activities (as defined in 20.2.70.7 NMAC). This shall include:

(a) a process flow sheet of all components of the facility which would be involved in routine operations and emissions;

(b) identification and description of all emissions points in sufficient detail to establish the basis for fees and applicability of requirements of the state and federal acts;

(c) emissions rates in tons per year, pounds per hour and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(d) specific information such as that regarding fuels, fuel use, raw materials, or production rates, to the extent it is needed to determine or regulate emissions;

(e) identification and full description, including all calculations and the basis for all control efficiencies presented, of air pollution control equipment and compliance monitoring devices or activities;

(f) the maximum and standard operating schedules of the source, as well as any work practice standards or limitations on source operation which affect emissions of regulated pollutants;

(g) if requested by the department, an operational plan defining the measures to be taken to mitigate source emissions during startups, shutdowns and emergencies;

(h) other relevant information as the department may reasonably require or which are required by any applicable requirements (including information related to stack height limitations developed pursuant to Section 123 of the federal act); and

(i) for each alternative operating scenario identified by the applicant, all of the information required in Subparagraphs (a) through (h) above, as well as additional information determined to be necessary by the department to define such alternative operating scenarios.

(6) Provide a list of insignificant activities (as defined in 20.2.70.7 NMAC) at the source, their emissions, to the extent required by the department, and any information necessary to determine applicable requirements.

(7) Provide a citation and description of all applicable air pollution control requirements, including:

(a) sufficient information related to the emissions of regulated air pollutants to verify the requirements that are applicable to the source; and

(b) a description of or reference to any applicable test method for determining compliance with each applicable requirement.

(8) Provide an explanation of any proposed exemptions from otherwise applicable requirements.

(9) Provide other specific information that may be necessary to implement and enforce other requirements of the state or federal acts or to determine the applicability of such requirements, including information necessary to collect any permit fees owed under 20.2.71 NMAC (operating permit emission fees).

(10) Provide certification of compliance, including all of the following.

(a) A certification, by a responsible official consistent with Subsection E of 20.2.70.300 NMAC, of the source's compliance status for each applicable requirement. For national ambient air quality standards, certifications shall be based on the following.

(i) For first time applications, this certification shall be based on modeling submitted with the application for a permit under 20.2.72 NMAC.

(ii) For permit renewal applications, this certification shall be based on compliance with the relevant terms and conditions of the current operating permit.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

(c) A statement that the source will continue to be in compliance with applicable requirements for which it is in compliance, and will, in a timely manner or at such schedule expressly required by the applicable requirement, meet additional applicable requirements that become effective during the permit term.

(d) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department.

(e) A statement indicating the source's compliance status with any enhanced monitoring and compliance certification requirements of the federal act.

(11) For sources that are not in compliance with all applicable requirements at the time of permit application, provide a compliance plan that contains all of the following.

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A narrative description of how the source will achieve compliance with such requirements for which it is not in compliance.

(c) A schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements. The schedule of compliance shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject, and the obligations of any consent decree or administrative order shall not be in any way diminished by the schedule of compliance. Any such schedule of compliance shall be supplemental to, and shall not prohibit the department from taking any enforcement action for noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports no less frequently than every six (6) months.

(e) For the portion of each acid rain source subject to the acid rain provisions of Title IV of the federal act, the compliance

plan content requirements specified in this paragraph, except as specifically superseded by regulations promulgated under Title IV of the federal act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

E. Certification. Any document, including any application form, report, or compliance certification, submitted pursuant to this part shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

[11/30/95; A, 11/14/98; 20.2.70.300 NMAC - Rn, 20 NMAC 2.70.III.300, 06/14/02; A, 9/6/06; A, 01/01/11]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.74 NMAC, Section 7, 9, 200, 300 and 320, effective 01/01/2011.

20.2.74.7 DEFINITIONS: Terms used but not defined in this part shall have the meaning given them by 20.2.2 NMAC (Definitions) (formerly AQCR 100). As used in this part the following definitions shall apply.

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

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

(1) This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 20.2.74.320 NMAC. Instead, Subsections G and [~~AQ~~] AR of this section shall apply for those purposes.

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

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

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

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

D. "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the class I federal area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with the following: 1) times of visitor use of the class I federal area; and 2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

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

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

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

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

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

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

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

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

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

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

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

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

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

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

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if

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

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

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

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

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

H. "Baseline area" means all lands designated as attainment or unclassifiable in which the major source or major modification would construct or would have an air quality impact equal to or greater than one microgram per cubic meter (annual average) of the pollutant for which the minor source baseline date is established. The major source or major modification establishes the minor source baseline date (see the definition "minor source baseline date" in this part). Lands are designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the act within each federal air quality control region in the state of New Mexico. Any baseline area established originally for TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. A TSP baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date (see "minor source baseline date" in this part).

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

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

(a) the actual emissions, as defined in this section, representative of sources in existence on the applicable minor source baseline date, except as provided in Paragraph (2) of this subsection;

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

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

(a) actual emissions, as defined in this section, from any major stationary source on which construction commenced after the major source baseline date; and

(b) actual emissions increases and decreases, as defined in Subsection B of this section, at any stationary source occurring after the minor source baseline date.

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

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

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

M. "Class I federal area" means any federal land that is classified or reclassified as "class I" as described in 20.2.74.108 NMAC.

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

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

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

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

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

basis.

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

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

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

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

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

(1) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

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

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

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

(2) requirements within any applicable state implementation plan;

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

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

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

Y. "Greenhouse gas" for the purpose of this part is defined as the aggregate group of the following six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

[~~Y~~]**Z. "High terrain"** means any area having an elevation nine hundred (900) feet or more above the base of a source's stack.

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

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

[~~AB~~]**AC. "Low terrain"** means any area other than high terrain.

[~~AC~~]**AD. "Lowest achievable emission rate"** means, for any source, the more stringent rate of emissions based on the following:

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

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

[~~AD~~]AE. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in of this section) of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

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

(a) routine maintenance, repair, and replacement;

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

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

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

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

(i) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

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

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

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

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

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

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

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does

not result in an increase in the potential to emit of any regulated pollutant emitted by the unit; this exemption shall apply on a pollutant-by-pollutant basis;

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

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.2.74.320 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.74.320 NMAC shall apply.

[~~AE~~]**AF. "Major source baseline date"** means:

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

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

[~~AF~~]**AG. "Major stationary source"** means the following.

(1) Any stationary source listed in table 1 (20.2.74.501 NMAC) which emits, or has the potential to emit, emissions equal to or greater than one hundred (100) tons per year of any regulated new source review pollutant.

(2) Any stationary source not listed in table 1 (20.2.74.501 NMAC) and which emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant.

(3) Any physical change that would occur at a stationary source not otherwise qualifying under Paragraphs (1) or (2) of this subsection if the change would constitute a major stationary source by itself.

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

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 (20.2.74.501 NMAC) or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

[~~AG~~]**AH. "Mandatory class I federal area"** means any area identified in the Code of Federal Regulations (CFR), 40 CFR Part 81, Subpart D. See 20.2.74.108 NMAC for a list of these areas in New Mexico.

[~~AH~~]**AI. "Minor source baseline date"** means the earliest date after the trigger date on which the owner or operator of a major stationary source or major modification subject to 40 CFR 52.21 or to this part submits a complete application under the relevant regulations.

(1) The trigger date is:

(a) in the case of particulate matter and sulfur dioxide, August 7, 1977; and

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

(2) Any minor source baseline date established originally for the TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. The department may rescind any TSP minor source baseline date where it can be shown, to the department 's satisfaction, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date, did not result in a significant amount of PM-10 emissions.

[~~AI~~]**AJ. "Natural conditions"** includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

[~~AJ~~]**AK. "Necessary preconstruction approvals or permits"** means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

[~~AK~~]**AL. "Net emissions increase"** means, with respect to any regulated new source review pollutant emitted by a major stationary source, the following.

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

(a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection D of 20.2.74.200 NMAC.

(b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as provided in Subsection G, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection G of this section shall not apply.

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

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

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

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

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

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

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

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

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

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

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

(8) Paragraph (2) of Subsection B of this section shall not apply for determining creditable increases and decreases.

[~~AL~~]**AM. "Nonattainment area"** means an area which has been designated under Section 107 of the Federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by EPA.

[~~AM~~]**AN. "Portable stationary source"** means a source which can be relocated to another operating site with limited dismantling and reassembly.

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

[~~AO~~]**AP. "Predictive emissions**

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

[~~AP~~]**AQ. "Project"** means a physical change in, or change in method of operation of, an existing major stationary source.

[~~AQ~~]**AR. "Projected actual emissions"** means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated new source review pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

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

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

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

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions unit's potential to emit, in tons per year, as defined in Subsection [~~AQ~~]AR of this section.

[~~AR~~]**AS. "Regulated new source review pollutant"**, for purposes of this part, means the following:

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

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

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

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

(5) Notwithstanding Paragraphs (1) through (4) of Subsection AS of this section, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in section 112 of the act, or added to the list pursuant to section 112(b)(2) of the act, and which have not been delisted pursuant to section 112(b)(3) of the act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the act.

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

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

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

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

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

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

[~~AU~~]**AV. "Secretary"** means the cabinet level secretary of the New Mexico environment department or his or her successor.

[~~AV~~]**AW. "Significant"** means in reference to a net emissions increase or the potential of a source to emit air pollutants, a rate of emission that would equal or exceed any of the rates listed in table 2 (20.2.74.502 NMAC).

[~~AW~~]**AX. "Significant emissions increase"** means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection [~~AV~~]AW of this section) for that pollutant.

[~~AX~~]**AY. "Stationary source"** means any building, structure, facility, or installation which emits, or may emit, any regulated new source review pollutant.

AZ. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the act, or a nationally-applicable regulation codified by the administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "greenhouse gases (GHGs)" shall not be subject to regulation except as provided in paragraphs AZ(4) and (5) of this section;

(2) for purposes of Paragraphs (3) through (5) of Subsection AZ of this section, the term "tons per year CO2 equivalent emissions (CO2e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(a) multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials;

(b) sum the resultant value from Subparagraph (a) of Paragraph (2) of Subsection AZ of this section for each gas to

compute a tons per year CO2e;

(3) the term "emissions increase" as used in Paragraphs (4) and (5) of Subsection AZ of this section shall mean that both a significant emissions increase (as calculated using the procedures in Subsection D of 20.2.74.200 NMAC) and a significant net emissions increase (as defined in Subsections AL, AW and AX of 20.2.74.7 NMAC) occur. For the pollutant GHGs, an emissions increase shall be based on tons per year CO2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tons per year CO2e instead of applying the value in table 2 of 20.2.74 NMAC;

(4) beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) the stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tons per year CO2e or more; or

(b) the stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of 75,000 tons per year CO2e or more; and

(5) beginning July 1, 2011, in addition to the provisions in Paragraph (4) of this subsection, the pollutant GHGs shall also be subject to regulation:

(a) at a new stationary source that will emit or have the potential to emit 100,000 tons per year CO2e; or

(b) at an existing stationary source that emits of has the potential to emit 100,000 tons per year CO2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tons per year CO2e or more;

(6) if a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in whole or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514, June 3, 2010), the definition "subject to regulation" shall be enforceable by the department only to the extent that it is enforceable by US EPA.

[~~AY~~]**BA. "Temporary source"** means a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations.

[~~AZ~~]**BB. "Visibility impairment"** means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

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

[07/20/95; 01/01/00; 20.2.74.7 NMAC - Rn, 20 NMAC 2.74.107, 10/31/02; A, 1/22/06; A, 8/31/09; A, 01/01/11]

20.2.74.9 DOCUMENTS: Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87503 [[~~2048 Galisteo St., Santa Fe, NM 87505~~]1301 Siler Rd., Bldg. B, Santa Fe, NM 87507].

[07/20/95; 20.2.74.9 NMAC - Rn, 20 NMAC 2.74.109, 10/31/02; A, 01/01/11]

20.2.74.200 APPLICABILITY.

A. The requirements of this part apply to the construction of any new major stationary source (as defined in 20.2.74.7 NMAC) or any project at an existing major stationary source in an area designated as attainment or unclassifiable.

B. The requirements of Sections 300 through 306, 400 and 403 of this part apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this part otherwise provides.

C. No new major stationary source or major modification to which the requirements of Subsections A, B, C and D of 20.2.74.300 NMAC, and Sections 301, 302, 303, 304, 305, 306, 400 and 403 of this part apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

D. Applicability procedures.

(1) Except as otherwise provided in Subsections E and F of this section, and consistent with the definition of major modification contained in 20.2.74.7 NMAC, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in 20.2.74.7 NMAC), and a significant net emissions increase (as defined in Subsections [~~AK~~]AL and [~~AV~~]AX of 20.2.74.7 NMAC). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) through (4) of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in 20.2.74.7 NMAC. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in 20.2.74.7 NMAC) and the baseline actual emissions (as defined in Paragraphs (1) and (2) of Subsection G of 20.2.74.7 NMAC) for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in 20.2.74.7 NMAC).

(4) Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in 20.2.74.7 NMAC) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Paragraph (3) of Subsection G of 20.2.74.7 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in 20.2.74.7 NMAC).

(5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in Paragraph (3) of this subsection for the existing unit and determined using the method specified in Paragraph (4) of this subsection for the new unit.

E. For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.2.74.320 NMAC.

[07/20/95; 20.2.74.200 NMAC - Rn, 20 NMAC 2.74.200, 10/31/02; A, 1/22/06; A, 01/01/11]

20.2.74.300 OBLIGATIONS OF OWNERS OR OPERATORS OF

SOURCES:

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

B. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, sections 74-2-1 to 74-2-17, NMSA 1978; any applicable regulations of the board; and any other requirements under local, state, or federal law.

C. Approval to construct shall become invalid if: 1) construction is not commenced within eighteen (18) months after receipt of such approval; 2) if construction is discontinued for a period of eighteen (18) months or more; or 3) if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within eighteen (18) months of the projected and approved commencement date. The secretary may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified.

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

E. The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection [~~AQ~~]AR of 20.2.74.7 NMAC for calculating projected actual emissions.

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

(a) a description of the project;

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

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection [~~AQ~~]AR of 20.2.74.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

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

(3) The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Subparagraph (b) of Paragraph (1) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

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

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection) by a significant amount (as defined in 20.2.74.7 NMAC) for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

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

(b) the annual emissions as calculated pursuant to Paragraph (3) of this subsection; and

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

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

[07/20/95; 20.2.74.300 NMAC - Rn, 20 NMAC 2.74.300, 10/31/02; A, 1/22/06; A, 01/01/11]

20.2.74.320 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs)

A. Applicability.

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

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

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

(b) does not have to be approved through the requirements of this part; and

(c) is not subject to the provisions in Subsection D of 20.2.74.300 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major new source review program).

(3) Except as provided under Subparagraph (c) of Paragraph [~~(1)~~](2) of this subsection, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions applicable to this section.

(1) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions (as defined in 20.2.74.7 NMAC) of all emissions units (as defined in 20.2.74.7 NMAC) at the source, that emit or have the potential to emit the PAL pollutant.

(2) Allowable emissions means "allowable emissions" as defined in 20.2.74.7 NMAC, except as this definition is modified in accordance with the following.

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

(b) An emissions unit's potential to emit shall be determined using the definition in 20.2.74.7 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(3) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection [~~AV~~]AW of 20.2.74.7 NMAC or in the act, whichever is lower.

(4) Major emissions unit means:

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

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

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

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

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

(8) PAL major modification means, notwithstanding the definitions for major modification and net emissions increase in 20.2.74.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

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

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

(11) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection [~~AV~~]AW of 20.2.74.7 NMAC or in the act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of this subsection.

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

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

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

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

D. General requirements for establishing PALs.

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

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

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

(c) The PAL permit shall contain all the requirements of Subsection G of this section.

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

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

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

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

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

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

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in 20.2.74.7 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection [~~AV~~] AW of 20.2.74.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source

owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOx to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) PAL effective period. The PAL effective period shall be 10 years.

(2) Reopening of the PAL permit.

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

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

(ii) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(iii) revise the PAL to reflect an increase in the PAL as provided under Subsection K of this section.

(b) The department may reopen the PAL permit for the following:

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

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source under the plan; and

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

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

I. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in Subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply.

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

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

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

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

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

(4) Any physical change or change in the method of operation at the major stationary source will be subject to major new source review requirements if such change meets the definition of major modification in 20.2.74.7 NMAC.

(5) The major stationary source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Subsection D of 20.2.74.300 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (2) of Subsection A of this section.

J. Renewal of a PAL.

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

(2) Application deadline. A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier

than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

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

(a) The information required in Subsection C of this section.

(b) A proposed PAL level.

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

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

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

(a) If the emissions level calculated in accordance with Subsection F of this section is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of this paragraph.

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

(c) Notwithstanding Subparagraphs (a) and (b) of this paragraph:

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

(ii) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Subsection K of this section (increasing a PAL).

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

K. Increasing a PAL during the PAL effective period.

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

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

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

(c) The owner or operator obtains a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of this paragraph, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major new source review process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

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

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

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

L. Monitoring requirements for PALs.

(1) General requirements.

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

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Paragraph (2) of this subsection and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of this paragraph, you may also employ an alternative monitoring approach that meets Subparagraph (a) of this paragraph if approved by the department.

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

(2) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of this subsection:

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

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

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

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

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

(c) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to

calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

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

(a) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

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

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

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

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

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

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

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

(c) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not required.

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

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

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

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

(9) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every 5 years after issuance of the PAL.

M. Recordkeeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(2) The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus 5 years:

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

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

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the applicable title V operating permit program. The reports shall meet the following requirements.

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

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

(b) total annual emissions (tons per year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of this section;

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

(d) a list of any emissions units modified or added to the major stationary source during the preceding 6-month period;

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

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

(g) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(2) Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to [~~40 CFR 70.6(a)(3)(iii)(B)~~]Paragraph (2) of Subsection E of 20.2.70.302 NMAC shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing [~~40 CFR 70.6(a)(3)(iii)(B)~~]Paragraph (2) of Subsection E of 20.2.70.302 NMAC. The reports shall contain the following information:

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

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

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

(d) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

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

O. Transition requirements.

(1) The department may not issue a PAL that does not comply with the requirements in this section after the administrator has approved regulations incorporating these requirements into a plan.

(2) The department may supersede any PAL which was established prior to the date of approval of the plan by the administrator with a PAL that complies with the requirements of this section.

[20.2.74.320 NMAC - N, 1/22/06; A,

01/01/11]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.5 NMAC, Sections 17, 18, 21 and 26 effective December 15, 2010.

15.1.5.17 APPLICATION FOR WORK PERMIT:

A. Application for a work permit shall be made in the same manner as set forth in the act or this rule for other applications. At the board's discretion, the board may delegate authority to the executive director or another designee to process and make the initial determination on all work permits. Except as provided for in Subsection [~~J~~] I of [~~15.1.5.17 NMAC~~] this section, no person shall be employed as a gaming employee unless the board, the executive director or the board's designee has first approved the application for such a permit.

B. The applicant shall submit his or her fingerprints in duplicate on fingerprint cards and his or her photograph in duplicate. Fingerprints shall not be accepted unless the fingerprints were taken under the supervision of, and certified by, a state police officer, a county sheriff, municipal chief of police, or sworn peace officer, or, upon board approval, another entity providing the services of a certified identification technician. The photographs shall be no smaller than 2" x 3" and must be satisfactory to the board. The photographs shall be taken no earlier than three months before the date the application for work permit was filed.

C. In addition to grounds for denial of an application described in the act and this rule, the board shall deny the application if the applicant has had a work permit revoked in any jurisdiction or has committed any act that is grounds for revocation of a work permit under the act or this rule.

D. A work permit issued to a gaming employee shall [~~identify the manufacturer's, distributor's, or gaming operator's license under which the permit is issued and shall~~] have clearly imprinted on the permit a statement that the permit is valid for gaming purposes. A licensee who employs an employee currently holding a valid work permit shall ensure that the employee registers his or her employment with the board in writing within three days of the employee's date of hire.

E. A work permit issued by the board is not an endorsement or clearance by the board, but is merely verification that the individual has furnished his or her fingerprints and photograph to the board as required by this rule.

[~~F.~~ ~~A work permit expires unless renewed in accordance with this title or if the employee is not employed as a gaming employee for more than 90 days.~~]

[**~~G~~] F.** [~~A work permit is property of the state of New Mexico. Any gaming employee whose employment is terminated for any reason shall surrender his or her work permit to the board upon termination.~~] A licensee shall notify the board in writing [~~of a work permit termination~~] that a work permittee has terminated his or her employment with the licensee within three (3) business days of the termination.

[~~H~~] G. Any otherwise qualified person may obtain a work permit to work as a gaming employee for a nonprofit gaming operator licensee and is not required to be a member of the nonprofit organization. A person holding a work permit may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

[**~~I.~~** ~~The holder of a work permit shall submit an application for a new work permit if the employee changes employers and the new employer is an applicant or licensee of the board. The employee shall not begin working for the new employer until the employee has completed a new work permit application.~~]

[~~J~~] H. Upon the receipt of a completed application, an applicant shall be provided a provisional gaming license which shall be terminated upon the issuance of a permanent work permit or the written determination to deny the work permit.

[11/30/98; 15.1.5.17 NMAC - Rn & A, 15 NMAC 1.5.17, 3/31/00; A, 10/15/00; A, 2/14/02; A, 5/14/04; A, 2/28/05; A, 5/15/07; A, 12/15/10]

15.1.5.18 APPLICATION FOR GAMING MACHINE LICENSE:

A. Application for a gaming machine license shall be made, processed, and determined in the same manner as set forth in the Act and this rule for other applications. No gaming machine or associated equipment shall be used for gaming by any licensee without prior written approval of the board.

B. No gaming machine shall be licensed unless it is of a brand, type, and series that has been approved by the board pursuant to the mandatory testing procedures set forth in this title. In addition, each individual gaming machine shall be licensed by the board before the gaming machine shall be used in any gaming activity. Such licensure shall include a license number assigned by the board to the individual gaming machine.

C. The application for a gaming machine license shall include a detailed description of the gaming machine for which approval is sought, including the manufacturer's name, the model, and the permanent serial number.

D. A gaming operator licensee shall license all gaming machines maintained on its gaming premises, up to the maximum number of gaming machines the gaming operator is statutorily permitted to operate, whether or not such machines are in operation on the gaming floor.

E. If a gaming operator licensee maintains gaming machines on its licensed premises in excess of the maximum number of gaming machines the gaming operator is statutorily permitted to operate, the gaming operator shall register such machines in accordance with 15.1.16.13 NMAC.

F. A gaming operator licensee that maintains one or more gaming machines solely to provide spare parts is not required to license such machines, but shall register such machines in accordance with 15.1.16.13 NMAC.

[11/30/98; 15.1.5.18 NMAC - Rn, 15 NMAC 1.5.18, 3/31/00; A, 2/28/05; A, 12/15/10]

15.1.5.21 APPLICATION FEES:

A. The applicant shall pay, in the amount and manner prescribed by this rule, all license fees and fees and costs incurred in connection with the processing and investigation of any application submitted to the board.

B. Applicants shall submit the following nonrefundable fees with an application for licensure or other approval:

(1) gaming machine manufacturer's license, $10,000;

(2) associated equipment manufacturer's license, $2,500;

(3) gaming machine distributor's license, $5,000;

(4) associated equipment distributor's license, $1,000.00;

(5) gaming operator's license for racetrack, $25,000;

(6) gaming operator's license for nonprofit organization, $100;

(7) approval of application to install pre-approved modification to a licensed gaming machine filed by gaming operator licensee, $25;

(8) gaming machine license, $100 per machine;

(9) work permit, $[~~25~~] 75;

(10) certification of finding of suitability, $100 for each person requiring investigation; and

(11) approval of amended gaming operator license, $50 for amended license due to addition or deletion of five or fewer machines; $250 for all other amended licenses.

C. In addition to any nonrefundable license or approval fee paid, the applicant shall pay all supplementary

investigative fees and costs, as follows:

(1) an applicant for a manufacturer's license, distributor's license, or gaming operator's license for a racetrack shall pay, in advance, an amount equal to the license fee as a deposit on fees and costs of the investigation. Upon completion of the investigation and determination of the actual fees and costs, the board shall refund overpayments or charge the applicant for underpayments in an amount sufficient to reimburse the board for actual fees and costs;

(2) all other applicants shall reimburse the board in an amount sufficient to cover actual fees and costs of the investigation upon completion of the investigation; and

(3) all applicants shall fully reimburse the board within 30 days of receipt of notice of actual fees and costs incurred by the board for any underpayment or other amount owed by the applicant.

D. Investigative fees are charged at the rate of $50 per hour for each hour spent by investigators of the board or the board's agents in conducting an investigation. In addition to fees, costs to be paid by the applicant include transportation, lodging, meals, and other expenses associated with traveling, which expenses shall be reimbursed based on state mileage and per diem rules, and office expenses, document copying costs, and other reasonable expenses incurred. Checks shall be made payable to the New Mexico gaming control board.

E. In addition to any nonrefundable application and supplementary investigation fees and costs, licensed manufacturers and distributors shall pay a gaming device inspection fee in an amount not to exceed the actual cost of the inspection. The manufacturer or distributor shall pay the estimated cost of the inspection in advance. Upon completion of the inspection and determination of the actual cost, the board shall refund overpayments or charge the manufacturer or distributor for underpayments in an amount sufficient to reimburse the board for the actual cost. The manufacturer or distributor shall fully reimburse the board within 30 days of receipt of notice of underpayment. Lab fees are charged at the rate of $50 per hour for each hour spent by the board's technical personnel to inspect or test a gaming device.

F. The board may refuse to take final action on any application unless all license, approval, and investigation fees and costs have been paid in full. The board shall deny the application if the applicant refuses or fails to pay all such fees and costs. In addition to any other limitations on reapplication, the applicant shall be debarred from filing any other application with the board until all such fees and costs are paid in full.

G. If the board determines at any time during the application process that the applicant is not qualified, or cannot qualify, to hold the license or other approval sought, the board shall notify the applicant, in writing. The board shall discontinue investigation and processing of the application and shall issue a final, written order denying the application.

H. The maximum fee for processing any application shall not exceed $100,000, regardless of actual costs of supplemental investigations.

I. The board may contract with any state board or agency to conduct any investigation required or permitted to be conducted under the act or board regulations, as determined necessary by the board.

J. Neither the license or approval fees nor any other fees or costs arising in connection with the application or investigation shall be refunded or waived on the grounds that the application was denied or withdrawn or that processing was otherwise terminated.

K. Gaming machine licensing fees may be pro-rated if the license is granted within three months of December 31.

[11/30/98; 15.1.5.21 NMAC - Rn, 15 NMAC 1.5.21, 3/31/00; A, 10/15/00; A, 2/14/02; A, 5/14/04; A, 2/28/05; A, 5/15/07; A, 12/15/10]

15.1.5.26 CHANGE IN NUMBER OF GAMING MACHINES; APPLICATION TO AMEND GAMING OPERATOR LICENSE: [~~A.~~] A gaming operator licensee shall not increase the number of gaming machines on, or remove a gaming machine from, the licensed premises without prior written approval from the board.

[~~B.~~ ~~A request to change the number of gaming machines on the licensed premises shall be submitted as an application for amendment to the gaming operator license. The application shall be made and processed in the manner prescribed by the board for other applications, using forms provided or approved by the board.~~]

[**~~(1)~~**] **A**. If the requested change is an increase in the number of gaming machines on the licensed premises, the applicant shall also submit, in accordance with this rule and with 15.1.18 NMAC, an application for gaming machine license or a registration form for each additional machine. The licensee also shall submit a detailed diagram of the licensed premises showing the proposed location of all gaming machines.

[**~~(2)~~**] **B**. If the requested change is a reduction in the number of machines due to the sale, transfer or disposal of one or more machines, the applicant shall ensure that such sale, transfer, or disposal is made in accordance with the procedures set forth in 15.1.16 NMAC.

[~~C.~~ ~~No application shall be made for any gaming machine the addition of which shall cause the number of gaming machines on the licensed premises to exceed the number authorized by the act.~~

~~D.~~ ~~The board may deny the request for amended license on any grounds deemed reasonable by the board.~~]

[11/30/98; 15.1.5.26 NMAC - Rn, 15 NMAC 1.5.26, 3/31/00; A, 2/28/05; A, 12/15/10]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.7 NMAC, Sections 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39 effective December 15, 2010.

15.1.7.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

A. "Act" means the Gaming Control Act.

B. "Central monitoring system" means the hardware and software at the board's central site used to control, monitor, and retrieve information from, all licensed gaming machines.

C. "Component" means a part of a gaming machine that is necessary for the proper operation and essential function of the gaming machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, programmed EPROM, bill acceptor, progressive system, monitoring system, and meter and any other parts the board determines are components; a component is necessary for the proper operation and essential function of a gaming machine if it affects, directly or indirectly, the gaming machine's operation, game outcome, security, recordkeeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not components.

D. "Conversion" means a change from one pre-approved configuration to another pre-approved configuration.

E. "Delayed ticket" means a ticket generated by a TITO-enabled slot machine which contains all information necessary for validation, but for which the TITO system has not yet received the validation information.

[**~~E.~~**] **F. "Event"** means an occurrence of elements or particular combinations of elements that are available on the particular gaming device.

[**~~F.~~**] **G. "Game outcome"** means the final result of the wager.

H. "Gaming device" means associated equipment or a gaming machine and includes a system for processing information that can alter the normal criteria of random selection that affects the operation of a game or determines the outcome of a game.

I. "Incomplete ticket" means a ticket that contains, at a minimum, the ticket validation number printed across the leading edge of the ticket, but is not of a quality that can be validated and redeemed through the automated functionality of a TITO system.

J. "Machine entry access log" means a written record that is maintained by a gaming operator licensee inside the locked cabinet of a gaming machine that documents the names and activities of persons accessing the interior of the gaming machine.

[~~G.~~] **K. "Modification"** means a change or alteration in an approved gaming machine that affects the manner or mode of play or the percentage paid by the gaming machine, including a change in control or graphics programs.

[~~H.~~] **L. "Multigame"** means a gaming device that offers a menu of more than one game to the player.

M. "Multi-station" means a gaming device that incorporates more than one player-terminal.

N. "Online ticket" means a ticket which contains all information necessary for validation, which may be presented for redemption to the TITO system before its expiration.

O. "Redeemed ticket" means a ticket which has been properly validated and redeemed by the TITO system and is no longer reflected as an active (i.e., unredeemed) ticket in the TITO system database.

[~~I.~~] **P. "Terminal controller"** means the central hardware and software that monitors and controls one or more gaming machines on the licensed premises.

Q. "Ticket redemption kiosk" means a device which uses bi-directional communications to the TITO system for redemption of tickets in exchange for cash or tokens. Kiosks are not capable of gaming functionality and may not issue tickets in exchange for cash or tokens.

R. "TITO system" means a ticket in/ticket out system which has a centralized TITO validation component and allows for issuance, validation, and acceptance of tickets at TITO-enabled gaming devices or kiosks, for gaming operations.

S. "TITO validation component" means that function of the TITO system whereby the TITO system receives information about a ticket which is presented for validation, compares the questioned ticket information to its database of known ticket information, and determines the validity of the questioned ticket. The TITO validation component is a bi-directional, centralized function within the TITO system which serves to validate the tickets for redemption.

[~~J.~~] **T. "State"** means the state of New Mexico.

[11/30/98; 15.1.7.7 NMAC - Rn, 15 NMAC 1.7.7, 3/31/00; A, 1/31/02; A, 5/15/07; A, 12/15/10]

15.1.7.10 CONTROL PROGRAM SPECIFICATIONS:

A. Except as otherwise authorized by the board,[~~ the gaming device control program must reside in the gaming device that is contained in a storage medium that is not alterable through use of the circuitry or programming of the gaming device itself~~]. all gaming devices which have control programs residing in storage media that is not alterable through any use of the circuitry or programming of the gaming device itself shall employ a mechanism to verify executable program code and data which may affect payouts or game outcome.

B. [~~Gaming device control programs must test themselves for possible corruption caused by failure of the program storage media. The test methodology must detect 99.99% of all possible failures.~~] The mechanism used shall detect 99.99 percent of all possible media failures and shall reside in and execute from storage media that is not alterable through any use of the circuitry or programming of the gaming device.

C. [~~The control program must check for all of the following:~~] All gaming devices that have control programs residing in storage media that are alterable through any use of the circuitry or programming of the gaming device itself shall:

(1) [~~corruption of non-volatile memory locations used for crucial gaming device functions;~~] employ a mechanism approved by the board which verifies that all control program components, including data and graphic information, are authentic copies of the approved components; the board may require tests to verify that components used by licensees are approved components; the verification mechanism shall prevent the execution of any control program component if any component is determined to be invalid; any program component of the verification mechanism shall reside in and execute from storage media that is not alterable through any use of the circuitry or programming of the gaming device;

(2) [~~information relating to the current game and final outcome of, at a minimum, the previous four games;~~] employ a mechanism which tests unused or unallocated areas of any alterable memory for unintended programs or data and tests the structure of the storage media for integrity; the mechanism shall prevent further play of the gaming device if unexpected data or structural inconsistencies are found;

(3) [~~random number generator outcome; and~~] provide a mechanism for keeping a record, anytime a control program component is added, removed, or altered; the record shall contain the date and time of the action, identification of the component affected, the reason for the modification and any pertinent validation information;

(4) [~~error states.~~] provide a mechanism for extracting the validation information for all control program components on demand via a communication port; a separate mechanism shall be provided that tests the integrity of the validation information delivered via the communication port.

D. [~~Detection of corruption is a game malfunction that must cause a tilt condition that identifies the error and causes the gaming device to cease functioning.~~] Any gaming device executing control programs from electrically erasable or other volatile memory shall employ a mechanism which verifies on a continuous basis, that all control program components residing therein, including fixed data and graphic information are authentic copies of the approved components. Additionally, control program components, excluding graphics and sound components, shall be fully verified at the time of loading into the electrically erasable or other volatile memory and upon any significant event, including but not limited to door closings, game resets, and power up. The mechanism shall prevent further play of the gaming device if an invalid component is detected.

E. [~~The control program must have the capacity to display a complete play history for the current game and, at a minimum, the previous four games.~~] Unless otherwise approved any gaming device that allows the adding, removing, or alteration of any control program components through a data communication facility shall employ a mechanism for preventing any change from taking place that would interrupt a game in progress. Any device, technique or network which may be used to accomplish the adding, removing, or alteration of any control program components may be considered a gaming device that shall receive separate approval.

F. [~~The control program must display an indication of all of the following:~~] Gaming devices with control programs or other security programs residing in conventional read only memory (ROM) devices such as EPROM's or fusible-link PROM's shall have the unused portions of the memory device that contains the program set to zero.

[~~(1) the game outcome or a representative equivalent;~~

~~(2) bets placed;~~

~~(3) credits or coins/tokens paid;~~

~~(4) credits or coins/tokens cashed out through the use of a hopper or ticket printer;~~

~~(5) any error conditions; and~~

~~(6) any other information deemed necessary by the board to ensure compliance with the Act and this rule.~~]

G. [~~The control program must provide the means for on-demand display of the electronic meters utilizing a key switch on the exterior of the gaming device.~~] Gaming device control programs shall check for any corruption of random access memory locations used for crucial gaming device functions including, but not limited to, information pertaining to the play and final outcome of the most recent game, at minimum four games prior to the most recent game, random number generator outcome, credits available for play, and any error states. These memory areas shall be checked for corruption following game initiation but prior to display of the game outcome to the player. Detection of any corruption that cannot be corrected shall be deemed to be a game malfunction and shall result in a tilt condition.

H. [~~The site controller for all of the licensed gaming machines on the licensed premises must be capable of printing, on demand, readings from the electronic meters of each machine.~~] All gaming devices shall have the capacity to display a complete play history for the most recent game played and four games prior to the most recent game. Retention of play history for additional prior games is encouraged. The display shall indicate the game outcome (or a representative equivalent), intermediate play steps (such as a hold and draw sequence or a double-down sequence), credits available, bets placed, credits or coins paid, and credits cashed out. Gaming devices offering games with a variable number of intermediate play steps per game may satisfy this requirement by providing the capability to display the last 50 play steps. The board may waive this standard for a particular device or modification if the hardware platform on which the device is based was originally approved prior to the adoption of this standard as modified and the manufacturer can demonstrate to the board's satisfaction that the imposition of the full standard would hinder the design of the device or would otherwise pose a hardship due to capacity limitations in the approved platform

I. The control program shall provide the means for on-demand display of the electronic meters utilizing a key switch on the exterior of the gaming device.

J. Either the TITO system or TITO-enabled gaming devices shall maintain an audit log that records, at a minimum, the last 25 ticket-in transactions. Upon ticket redemption, the log shall properly update with the ticket redemption information, including the date and time of redemption, amount of ticket, and at least the last four digits of the ticket validation number.

K. Either the TITO system or TITO-enabled gaming devices shall maintain an audit log that records, at a minimum, the last 25 ticket out transactions. Upon ticket issuance, the log shall properly update with the ticket issued information, including the date and time of issuance, amount of ticket, and at least the last four digits of the ticket validation number.

[11/30/98; 15.1.7.10 NMAC - Rn, 15 NMAC 1.7.10, 3/31/00; A, 12/15/10]

15.1.7.11 GENERAL TICKETING STANDARDS:

A. Racetrack licensees may offer ticketing systems whereby TITO-enabled slot machines accept and issue tickets in exchange for cash, tokens, or tickets using TITO systems.

B. TITO-enabled slot machines shall be capable of issuing and accepting only the casino's tickets. The board must approve the design of all tickets.

C. All tickets shall have the following minimum characteristics:

(1) a primary validation number, which must be printed on the leading edge of the ticket;

(2) a secondary validation number, identical to the primary validation number, which shall be printed on the body of the ticket;

(3) a t least one unique identifier, such as a barcode;

(4) property name;

(5) date and time the ticket was generated;

(6) dollar value of the ticket printed both numerically and in text;

(7) a statement that the ticket will expire 180 days after issuance; and

(8) sequence number of the ticket printed by the slot machine.

D. Validation. TITO systems shall provide for on-line, real-time validation of online tickets. Prior to issuing or authorizing issuance of consideration (whether cash, tokens, credits, or another ticket) in exchange for a ticket, the TITO system shall validate the ticket from the TITO validation component. Casinos shall have at least one TITO validation component which may be located in a cashier cage.

E. If a ticket has a value that is not evenly divisible by the wagering denomination, when inserted into a TITO-enabled slot machine, the machine shall either:

(1) return the ticket to the patron;

(2) accept the ticket and allow for insertion of additional wagering consideration if the ticket value is less than the wagering denomination; or

(3) accept the ticket and either display the indivisible portion of the ticket on a credit meter or issue another ticket for that indivisible portion.

F. A TITO-enabled slot machine shall be capable of generating two types of tickets: on-line tickets and delayed tickets.

(1) On-line tickets: If a TITO-enabled slot machine is properly communicating with the TITO system, the machine will be able to generate an on-line ticket. When a patron requests the issuance of a ticket in this situation, the machine will generate a ticket that utilizes the validation information generated by the TITO system or the machine, and communicate to the TITO system that it has successfully completed the transaction.

(2) Delayed tickets: If a TITO-enabled slot machine loses communication with a TITO system before validation information is successfully communicated to the TITO system for the last ticket out transaction, then all subsequent cash out attempts must result in the gaming machine issuing payment to the player via another available means such as, but not limited to, a hopper pay or a hand pay. The gaming machine shall be capable of storing delayed ticket data until such time that it has been successfully communicated to the TITO system.

(a) TITO systems may include a function whereby, prior to the restoration of communications, delayed ticket information may be manually input into the TITO system at a cashier station or other secure location.

(b) When communications are restored, delayed ticket information provided by the machine to the TITO system must be reconciled to the delayed tickets that were manually redeemed.

G. Tickets expire 180 days after issuance which is explicitly stated on each ticket. Upon expiration, the ticket is no longer valid for gaming purposes. TITO systems must recognize expired tickets as invalid and unredeemable.

H. The reporting requirements for ticketing transactions are defined in the minimum internal control procedures established by the board.

I. Ticket redemption kiosks shall perform to the same security standards as TITO-enabled slot machines, and shall include logs as required throughout this rule.

J. Kiosks shall also have a **total in** meter which accumulates the total value of all tickets accepted by the device,

and a **total out** meter which accumulates the total value of payments issued by the device.

K. Kiosks redeem valid tickets for cash and tokens only; they may not generate and issue tickets.

[11/30/98; 15.1.7.11 NMAC - Rn & A, 15 NMAC 1.7.11, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.11 NMAC - N, 12/15/10]

~~[15.1.7.11]~~15.1.7.12 ACCOUNTING METER SPECIFICATIONS:

A. A gaming machine shall be equipped with both electronic and electromechanical meters.

B. A gaming machine's electromechanical meters shall have no less than six digits.

C. A gaming machine's electronic meters shall tally totals to eight digits and be capable of rolling over when the maximum value is reached.

D. A gaming machine's control program shall provide the means for on-demand display of the electronic meters utilizing a key switch on the exterior of the machine.

E. The required electromechanical meters shall comply with the following and shall count and report data on a basis consistent with the meters described Subsection H of [~~15.1.7.11~~] 15.1.7.12 NMAC below:

(1) the coin-in meter shall cumulatively count the number of coins or tokens that are wagered by actual coins or tokens that are inserted, or credits bet, or both;

(2) the coin-out meter or amount won meter shall cumulatively count the number of coins, credits, or tokens won as a result of game play including hand-paid jackpots; notwithstanding the foregoing, a manufacturer may choose to incorporate a coin-out meter and hand-pay jackpot meter as separate meters;

(3) the hand-pay jackpot meter shall identify the number of coins, credits, or tokens won as a result of game play resulting in a hand-pay jackpot; and

(4) the coins-dropped meter shall maintain a cumulative count of the number of coins or tokens diverted into a drop bucket plus the value of the bills inserted that have been inserted into the bill acceptor.

F. Electromechanical meters shall meet a reasonable level of accuracy, given the available technology, as approved by the board.

G. Electronic meters shall have an accuracy rate of 99.99% or better.

H. The required electronic meters shall comply with the following and shall count and report data on a basis consistent with the meters described in Subsection E of [~~15.1.7.11~~] 15.1.7.12 NMAC above:

(1) the coin-in meter shall cumulatively count the value or number of coins or tokens that are wagered by actual coins or tokens that are inserted, or credits bet, or both;

(2) the coins-out meter or amount won meter shall cumulatively count the value or number of coins, credits, or tokens won as a result of game play, including hand-paid jackpots; notwithstanding the foregoing, a manufacturer may choose to incorporate a coin-out meter and hand-pay jackpot meter as separate meters;

(3) the coins-dropped meter shall maintain a cumulative count of the value or number of coins or tokens diverted into a drop bucket plus the value of the bills that have been inserted into the bill acceptor;

(4) the games played meter shall display the cumulative number of games played;

(5) a cabinet door meter shall display the number of times the front cabinet door was opened; and

(6) the drop door meter shall display the number of times the drop door or the bill acceptor door was opened;

(7) the ticket/voucher-in meter shall cumulatively count the value or number of all wagering vouchers accepted by the machine;

(8) the ticket/voucher-out meter shall cumulatively count the value or number of all wagering vouchers and payout receipts issued by the machine.

I. If a gaming device is equipped with a bill acceptor, then the device shall be equipped with a bill acceptor meter that records the following:

(1) the total number of bills that were accepted;

(2) an accounting of the number of each denomination of bill accepted; and

(3) the total dollar amount of bills accepted.

J. A gaming machine shall be designed so that the replacement parts or modules required for normal maintenance do not require replacement of the electromechanical meters.

K. A gaming machine shall have meters that continuously display all of the following information relating to current play or monetary transaction:

(1) the number of coins, tokens, or credits wagered in the current game;

(2) the number of coins, tokens, or credits won in the current game, if applicable;

(3) the number of coins or tokens paid by the hopper for a credit cashout or a direct pay from a winning outcome; and

(4) the number of credits available for wagering, if applicable.

L. Electronically stored meter information required by this rule shall be preserved after a power loss to the gaming device and must be maintained for a period of not less than 180 days.

M. A gaming machine shall not have a mechanism that causes the required electronic accounting meters to clear automatically when an error occurs.

N. The required electronic accounting meters shall be cleared only if approved by the board.

O. Required meter readings shall be recorded before and after the electronic accounting meter is cleared.

[11/30/98; 15.1.7.12 NMAC - Rn, 15 NMAC 1.7.12, 3/31/00; A, 5/15/07; 15.1.7.12 NMAC - Rn, 15.1.7.11 NMAC & A, 12/15/10]

~~[15.1.7.12]~~ 15.1.7.13 RANDOMNESS EVENTS AND RANDOMNESS TESTING:

A. A random event is an event with a given set of possible outcomes that has a given probability of occurrence called the distribution. Two events are called independent if the outcome of one event does not have an influence on the outcome of the other event and the outcome of one event does not affect the distribution of another event.

B. A gaming machine shall be equipped with a random number generator to make the selection process. A selection process is considered random if all of the following specifications are met:

(1) the random number generator satisfies not less than a 99% confidence level using the standard chi-squared analysis;

(2) the random number generator does not produce a statistic with regard to producing patterns of occurrences; the random number generator is considered random if it meets the 99% confidence level with regard to the runs test or any similar pattern testing statistic;

(3) the random number generator produces numbers that are independently chosen without regard to any other symbol produced during that play; this test is the correlation test; the random number generator is considered random if it meets the 99% confidence level using standard correlation analysis;

(4) the random number generator produces numbers that are chosen without reference to the series of outcomes in the previous game; this test is the serial correlation test; the random number generator is considered random if it meets the 99% confidence level using standard serial correlation analysis;

(5) the random number generator and random selection process shall be impervious to influences from outside the gaming device, including, but not limited to, electromagnetic interference, electrostatic interference, and radio frequency interference; and

(6) a gaming machine shall use

appropriate communication protocols to protect the random number generator and random selection process from influence by associated equipment that is conducting data communications with the gaming machine.
[11/30/98; 15.1.7.13 NMAC - Rn, 15 NMAC 1.7.13, 3/31/00; A, 5/15/07; 15.1.7.13 NMAC - Rn, 15.1.7.12 NMAC, 12/15/10]

[~~15.1.7.13~~] 15.1.7.14 SAFETY AND POWER SUPPLY SPECIFICATION:

A. Electrical and mechanical parts and design principles shall not subject a player to physical hazards. A gaming machine shall be electronically tested to the UL-22 standard for amusement and gaming devices or an equivalent standard. Testing may be done by any nationally or internationally recognized electrical safety testing laboratory.

B. Spilling a conductive liquid on the gaming machine shall not create a safety hazard or alter the integrity of the gaming device's performance.

C. The power supply used in a gaming machine shall be designed to minimize leakage of current in the event of an intentional or inadvertent disconnection of the alternate current power ground.

D. A surge protector shall be installed on each gaming machine. The surge protector may be internal to the power supply or external.

E. An on and off switch that controls the electrical current used to operate the gaming machine shall be located in an accessible place in the interior of the gaming machine.

F. The gaming machine power supply filtering shall be sufficient to prevent disruption of the gaming machine by a repeated switching on and off of the AC power.

G. Except in the case of total memory failure, if the gaming machine is still operable, a gaming machine shall be capable of continuing the current play with all the current play features after a gaming device malfunction is cleared.
[11/30/98; 15.1.7.14 NMAC - Rn, 15 NMAC 1.7.14, 3/31/00; A, 5/15/07; 15.1.7.14 NMAC - Rn, 15.1.7.13 NMAC, 12/15/10]

[~~15.1.7.14~~] 15.1.7.15 COIN AND TOKEN ACCEPTOR SPECIFICATIONS:

A. At least one electronic coin or token acceptor shall be installed in each gaming machine unless the gaming machine accepts bills only.

B. A coin or token acceptor shall be evaluated by an independent testing laboratory approved by the board and approved by the board to indicate that it meets the requirements of this rule.

C. The coin or token acceptor shall be designed to accept designated coins or tokens and to reject others.

D. The coin or token acceptor on a gaming machine shall be designed to prevent the use of cheating methods, including, but not limited to, slugging, stringing, or spooning.

E. A coin or token that is accepted but not credited to the current game shall be returned to the player by activating the hopper or crediting toward the next play of the gaming device. The gaming device control program must be capable of handling rapidly fed tokens so that instances where a token is accepted but not credited to the current game are minimized.

F. A gaming device must use a coin or token acceptor that accepts or rejects a token on the basis of metal composition, mass, composite makeup, or equivalent security.
[11/30/98; 15.1.7.15 NMAC - Rn, 15 NMAC 1.7.15, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.15 NMAC - Rn, 15.1.7.14 NMAC, 12/15/10]

[~~15.1.7.15~~] 15.1.7.16 B I L L ACCEPTOR SPECIFICATIONS:

A. A gaming device may have a bill acceptor installed into which a patron may insert currency or a ticket in exchange for an equal value of gaming device credits. The patron shall be able to obtain an equal number of tokens or credits for the amount of currency that was inserted into the bill acceptor.

B. A bill acceptor shall have software programs that enable the acceptor to differentiate between genuine and counterfeit bills to a high degree of accuracy. Bill acceptors may utilize flash technology upon approval of the board after evaluation by an independent testing laboratory.

C. A bill acceptor shall be equipped with a bill acceptor drop box to collect the currency inserted into the bill acceptor. The bill acceptor shall:

(1) be housed within the gaming machine or, if mounted on the outside of the gaming machine, be contained in a locked compartment; the key to such compartment shall be different from any other key on the gaming machine; and

(2) be equipped with a bill acceptor drop box that includes a stacker; the drop box shall be identifiable to the gaming machine from which it was removed and have a separate lock to access the contents of the bill acceptor drop box; the key to the lock shall not access any other area of the gaming machine.
[11/30/98; 15.1.7.16 NMAC - Rn, 15 NMAC 1.7.16, 3/31/00; A, 5/15/07; 15.1.7.16 NMAC - Rn, 15.1.7.15 NMAC, 12/15/10]

[~~15.1.7.16~~] 15.1.7.17 AUTOMATIC LIGHT ALARM SPECIFICATIONS: A light shall be installed on the top of the gaming machine that automatically illuminates when the door to the gaming machine is opened or when associated equipment that may affect the security or operation of the gaming machine is exposed, if the equipment is physically attached to the gaming machine.
[11/30/98; 15.1.7.17 NMAC - Rn, 15 NMAC 1.7.17, 3/31/00; 15.1.7.17 NMAC - Rn, 15.1.7.16 NMAC, 12/15/10]

[~~15.1.7.17~~] 15.1.7.18 INTERIOR OF GAMING MACHINE; LOGIC BOARDS:

A. The internal space of a gaming device must not be readily accessible when the cabinet door is closed. The cabinet door of the gaming device must be both locked and monitored.

B. Access to the area described in [~~15.1.7.17(C)~~] Subsection C of 15.1.7.18 NMAC is prohibited without prior notice to the board, including the name of the person seeking access, the person's affiliation with the gaming operator licensee or owner of the gaming device, and the date, time, and purpose of such access. Unauthorized tampering or entrance into the logic area without prior notice is grounds for disciplinary action.

C. The logic boards, program storage medium, and RAM or non-volatile memory of a gaming device must be contained in a separate, locked enclosure within the gaming device[~~, and the enclosure must be sealed with evidence tape by an employee or other agent of the board~~].
[11/30/98; 15.1.7.18 NMAC - Rn, 15 NMAC 1.7.18, 3/31/00; A, 5/15/07; 15.1.7.18 NMAC - Rn, 15.1.7.17 NMAC & A, 12/15/10]

[~~15.1.7.18~~]15.1.7.19 HARDWARE SWITCH SPECIFICATIONS:

A. A hardware switch shall not be installed if it alters the pay tables or payout percentages in the operation of a gaming machine.

B. A hardware switch may be installed to control graphic routines, speed of play, sound, or other board-approved cosmetic play features.
[11/30/98; 15.1.7.19 NMAC - Rn, 15 NMAC 1.7.19, 3/31/00; A, 5/15/07; 15.1.7.19 NMAC - Rn, 15.1.7.18 NMAC, 12/15/10]

[~~15.1.7.19~~] 15.1.7.20 MULTIGAMES:

A. A multigame may have various games with configurable percentages. A multigame may be approved by the board if, in addition to any other requirements in this rule, the following eight-digit electronic meters are available upon display for each game offered on the menu: credits wagered or equivalent, and credits won or equivalent.

B. If the method of

configuring the game menu may be accomplished by entering a configuration mode of the device, then the method employed shall meet both of the following standards:

(1) the method has sufficient safeguards to prevent unauthorized access; and

(2) the method does not result in data loss or corruption of data sent to the central monitoring system.

[11/30/98; 15.1.7.20 NMAC - Rn, 15 NMAC 1.7.20, 3/31/00; A, 5/14/04; A, 5/15/07; 15.1.7.20 NMAC - Rn, 15.1.7.19 NMAC, 12/15/10]

[~~15.1.7.20~~] 15.1.7.21 DISPLAY OF RULES OF PLAY:

A. The rules of play for a gaming machine shall be displayed on the face or screen of the gaming device or capable of display at the player's option through use of an easily-accessible help screen.

B. The rules of play shall be evaluated by the independent testing laboratory designated by the board and shall be approved by the board. The board may reject the rules if the board determines that the rules are incomplete, conflicting, confusing, or misleading.

C. The rules of play shall be kept under glass or other transparent substance.

D. The rules of play shall not be altered without prior approval from the board.

E. Except for posting of odds pursuant to Section 15.1.10.21 NMAC and the display of the rules of play, stickers or other removable devices shall not be placed on the gaming device face unless their placement is approved by the board.

[11/30/98; 15.1.7.21 NMAC - Rn, 15 NMAC 1.7.21, 3/31/00; A, 5/15/07; 15.1.7.21 NMAC - Rn, 15.1.7.20 NMAC, 12/15/10]

[~~15.1.7.21~~] 15.1.7.22 ERROR CONDITIONS AND AUTOMATIC CLEARING:

A. A gaming machine shall be capable of detecting and displaying the following conditions: power reset, door open, and inappropriate coin-in or token-in if the coin or token is not automatically returned to the player.

B. The conditions described in Subsection A of [~~15.1.7.21~~] 15.1.7.22 NMAC above shall be automatically cleared by the gaming machine upon initiation of a new play sequence.

[11/30/98; 15.1.7.22 NMAC - Rn, 15 NMAC 1.7.22, 3/31/00; A, 5/15/07; 15.1.7.22 NMAC - Rn, 15.1.7.21 NMAC & A, 12/15/10]

[~~15.1.7.22~~] 15.1.7.23 ERROR CONDITIONS AND CLEARING BY AN ATTENDANT:

A. A gaming machine shall be capable of detecting and displaying, and an attendant may clear, all of the following error conditions:

(1) coin- or token-in jam;

(2) coin- or token-out jam;

(3) hopper empty or timed-out;

(4) RAM error;

(5) hopper runaway or extra coin or token paid out;

(6) coin- or token-in error conditions;

(7) reel spin error of any type, including a misindex condition of rotating reels; the specific reel number must be identified in the error indicator; and

(8) low RAM battery, for batteries external to the RAM itself, or low power source.

B. A description of the gaming machine error codes and their meanings shall be contained inside each gaming machine.

[11/30/98; 15.1.7.23 NMAC - Rn, 15 NMAC 1.7.23, 3/31/00; A, 5/15/07; 15.1.7.23 NMAC - Rn, 15.1.7.22 NMAC, 12/15/10]

[~~15.1.7.23~~] 15.1.7.24 HOPPER MECHANISM SPECIFICATIONS:

A. If a gaming machine is equipped with a hopper, the hopper shall be designed to detect all of the following and force the gaming device into a tilt condition if one of the following occurs:

(1) jammed coin or token;

(2) extra coin or token paid out;

(3) hopper runaway; or

(4) hopper empty condition.

B. The gaming machine control program shall monitor the hopper mechanism for the error conditions specified in Subsection A of [~~15.1.7.23~~] 15.1.7.24 NMAC above in all game conditions.

C. All coins or tokens paid from the hopper mechanism shall be accounted for by the gaming machine, including, to the extent possible, coins or tokens paid as extra coins or tokens during a hopper malfunction.

D. Hopper pay limits shall be designed to permit compliance by a gaming operator licensee with all applicable tax laws, rules and regulations.

[11/30/98; 15.1.7.24 NMAC - Rn, 15 NMAC 1.7.24, 3/31/00; A, 5/15/07; 15.1.7.24 NMAC - Rn, 15.1.7.23 NMAC & A, 12/15/10]

[~~15.1.7.24~~] 15.1.7.25 TICKET PRINTER SPECIFICATIONS:

A. A ticket printer shall be capable of producing the following:

(1) date and time;

(2) identification number of the gaming machine;

(3) credits and their values; and

(4) validation number.

B. The ticket printer shall be capable of sensing a paper out condition and completing printing of any unprinted tickets after the paper out fault has been cleared.

C. The machine shall either keep a duplicate copy or print only one (1) copy to the player but have the ability to retain the last ticket-out information to resolve player disputes. In addition, an approved system shall be used to validate the payout ticket, and the ticket information on the system shall be retained at least as long as the ticket is valid at that location.

D. Ticket printers shall be mounted inside a secure area of the TITO-enabled gaming device.

[11/30/98; 15.1.7.25 NMAC - Rn, 15 NMAC 1.7.25, 3/31/00; A, 5/15/07; 15.1.7.25 NMAC - Rn, 15.1.7.24 NMAC & A, 12/15/10]

[~~15.1.7.25~~] 15.1.7.26 BIDIRECTIONAL COMMUNICATION:

A gaming machine that is capable of bidirectional communication with internal or external associated equipment shall use a communication protocol that ensures that erroneous data or signals will not adversely affect the operation of the gaming device.

[11/30/98; 15.1.7.26 NMAC - Rn, 15 NMAC 1.7.26, 3/31/00; A, 1/31/02; A, 5/14/04; A, 5/15/07; 15.1.7.26 NMAC - Rn, 15.1.7.25 NMAC, 12/15/10]

[~~15.1.7.26~~] 15.1.7.27 THEORETICAL PERCENTAGE PAYOUT REQUIREMENTS:

A. During the expected lifetime of the gaming machine, the gaming machine shall not pay out less than 80%.

B. The theoretical payout percentage shall be determined using standard methods of the probability theory. The percentage shall be calculated using the highest level of skill where player skill impacts the payback percentage.

C. A gaming machine shall have a probability of obtaining the single highest posted maximum payout of more than 1 in 50,000,000.

[11/30/98; 15.1.7.27 NMAC - Rn, 15 NMAC 1.7.27, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.27 NMAC - Rn, 15.1.7.26 NMAC, 12/15/10]

[~~15.1.7.27~~] 15.1.7.28 REVOCATION OF LICENSE OR APPROVAL:

A. The board may revoke the license or approval of a gaming machine if the board determines, in its discretion, that the gaming machine:

(1) does not perform in the manner described in the application;

(2) is defective or malfunctions frequently;

(3) has a detrimental impact on the conduct of the gaming operation; or

(4) adversely affects the computation of taxes due, but not limited to, inaccurate computation, defects, or malfunctions.

B. The board shall notify, in writing, the manufacturer or distributor of the gaming machine of the revocation of the license or approval. The board shall advise the manufacturer or distributor of the date on which use of the gaming machine must cease.

C. The board shall notify, in writing, the gaming operator licensees that use the gaming machine of the revocation of the license or approval. The board shall advise the licensees of the date on which use of the gaming machine must cease.

D. A gaming operator licensee or applicant shall cease using, on the date established by the board, the gaming machine for which the license or approval has been revoked. The licensee shall notify the board, in writing, if the licensee believes it cannot cease use of the gaming machine by the established date and shall request an extension of time. The board shall advise the gaming operator licensee or applicant, in writing, whether the requested extension is approved or denied.

[11/30/98; 15.1.7.28 NMAC - Rn, 15 NMAC 1.7.28, 3/31/00; A, 5/15/07; 15.1.7.28 NMAC - Rn, 15.1.7.27 NMAC, 12/15/10]

[~~15.1.7.28~~] 15.1.7.29 NEW OR MODIFIED GAMING DEVICES; ADDITIONAL NOTICE REQUIREMENTS:

A. The manufacturer or distributor of gaming machine shall notify the board, in writing, of any problems, defects, or malfunctions of any gaming machine that has been approved by the board if the problem, defect, or malfunction affects game integrity or is recurring.

B. The manufacturer or distributor of a gaming machine shall advise the board, in writing, if any other jurisdiction has revoked the approval of any gaming machine approved or licensed by the board.

C. A gaming operator licensee or applicant shall notify the board, in writing, of any problems, defects, or malfunctions that affect the fairness or integrity of the operation or play of any gaming machine that has been approved by the board and is used by the licensee, or is proposed for use by the applicant, in the state.

D. A gaming operator licensee or applicant shall notify the board, in writing, if the approval of a gaming machine approved by the board and used by the gaming operator licensee, or proposed to be used by the gaming operator license applicant, has been revoked by any other jurisdiction.

[11/30/98; 15.1.7.29 NMAC - Rn, 15 NMAC 1.7.29, 3/31/00; A, 5/15/07; 15.1.7.29 NMAC - Rn, 15.1.7.28 NMAC, 12/15/10]

[~~15.1.7.29~~] 15.1.7.30 APPROVAL OF ASSOCIATED EQUIPMENT AND MODIFICATION OF PREVIOUSLY APPROVED ASSOCIATED EQUIPMENT; APPROVAL REQUIRED: Except as otherwise determined by the board, a manufacturer or distributor of associated equipment shall not distribute associated equipment or any modification thereto to a gaming operator licensee unless the board has approved the associated equipment or modification.

[11/30/98; 15.1.7.30 NMAC - Rn, 15 NMAC 1.7.30, 3/31/00; A, 5/15/07; 15.1.7.30 NMAC - Rn, 15.1.7.29 NMAC, 12/15/10]

[~~15.1.7.30~~] 15.1.7.31 ASSOCIATED EQUIPMENT AND MODIFICATIONS; APPLICATION FOR APPROVAL:

A. An applicant for approval of, or modification of existing associated equipment shall; submit an application to the board on forms provided or approved by the board.

B. The following information shall be included on the application:

(1) the name, business address, and business telephone number of the manufacturer or distributor;

(2) the federal identification number and New Mexico taxpayer identification number, or social security number of the manufacturer or distributor;

(3) a list of the jurisdictions that have approved the associated equipment and a copy of the document of approval from each jurisdiction; and

(4) additional information deemed necessary by the board to enable complete understanding of the operation and function of the associated equipment for which approval is sought.

C. The board has the authority to take, authorize, or require each of the following actions:

(1) employ the services of an outside independent gaming test laboratory to conduct the testing;

(2) bill a licensee who requests licensure or approval of associated equipment through any billing mechanism the board deems appropriate for all costs of testing;

(3) require transportation of not more than two working models of the associated equipment to a designated independent laboratory for review and inspection. The laboratory may dismantle the associated equipment and may destroy the electronic components in order to fully evaluate the equipment;

(4) require that the applicant provide specialized equipment or the services of an independent technical expert to evaluate the associated equipment; and

(5) require the manufacturer or distributor seeking approval of the associated equipment to pay all the costs of transportation, review, inspection and testing.

D. If the board requires the manufacturer or distributor of associated equipment to submit the associated equipment to an independent laboratory for testing, then the manufacturer or distributor shall provide the following information to the independent laboratory:

(1) the information set forth in Paragraphs (1) through (5) of Subsection B of [~~15.1.7.30~~] 15.1.7.31 NMAC above;

(2) a complete, comprehensive, and technically accurate description and explanation of the associated equipment and its intended use in both technical and lay language; the document must be signed under penalty of perjury;

(3) detailed operating procedures of the associated equipment; and

(4) details of all tests previously performed on the associated equipment, the conditions and standards under which the tests were performed, and the person or persons who conducted the tests.

E. Upon testing of any associated equipment, the independent laboratory shall provide the board with documentation of the following:

(1) details of the tests performed on the associated equipment;

(2) results of tests performed on the associated equipment;

(3) detailed operating procedures of the associated equipment;

(4) percentage calculations of the associated equipment, if applicable, and

(5) any other information deemed necessary by the board to ensure compliance with the act and this rule.

F. A gaming operator licensee shall only install or use associated equipment that has been approved by the board after determination that the associated equipment is in compliance with the technical standards set forth in this rule.

G. After the board determines whether to approve or disapprove the associated equipment, the board shall notify the manufacturer or distributor of its decision, in writing.

H. A gaming operator licensee shall not alter the manner in which associated equipment operates or revise or modify the associated equipment without the prior written approval of the board.

[11/30/98; 15.1.7.31 NMAC - Rn, 15 NMAC 1.7.31, 3/31/00; 15.1.7.31 NMAC -

Rn, 15.1.7.30 NMAC & A, 12/15/10]

[~~15.1.7.31~~] 15.1.7.32 WAIVER OF EVALUATION AND TESTING REQUIREMENTS: The board may waive, in the board's discretion, the evaluation and testing requirements described in this rule if the applicant provides evidence satisfactory to the board that the gaming device sought to be approved is identical in all material respects to a model that has been specifically tested and approved for current play by gaming officials in Nevada or New Jersey.
[11/30/98; 15.1.7.32 NMAC - Rn, 15 NMAC 1.7.32, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.32 NMAC - Rn, 15.1.7.31 NMAC, 12/15/10]

[~~15.1.7.32~~] 15.1.7.33 REVOCATION OF APPROVAL OF ASSOCIATED EQUIPMENT OR MODIFICATION:

A. The board may revoke approval of associated equipment or any modification thereto, if the board finds that the associated equipment:

(1) does not perform in the manner described in the application;

(2) is defective or malfunctions frequently;

(3) has a detrimental impact on the conduct of a gaming operation; or

(4) adversely affects the computation of taxes for reasons including, but not limited to, inaccurate computation, defects, or malfunctions.

B. The board shall notify, in writing, the manufacturer or distributor of the associated equipment of the revocation of approval. The board shall advise the manufacturer or distributor of the associated equipment of the date on which use of the associated equipment must cease.

C. The board shall notify, in writing, the gaming operator licensees that use, or applicants that propose to use, the associated equipment of revocation of approval. The board will advise the gaming operator licensee or applicant of the date on which the use of the associated equipment must cease.

D. A gaming operator licensee or applicant shall cease using the associated equipment for which approval has been revoked by the date established by the board. The licensee shall notify the board, in writing, if the licensee believes it cannot cease use of the associated equipment by the established date and shall request an extension of time. The board shall advise the gaming operator licensee or applicant, in writing, whether the requested extension is approved or denied.
[11/30/98; 15.1.7.33 NMAC - Rn, 15 NMAC 1.7.33, 3/31/00; A, 5/15/07; 15.1.7.33 NMAC - Rn, 15.1.7.32 NMAC, 12/15/10]

[~~15.1.7.33~~]15.1.7.34 ASSOCIATED EQUIPMENT; ADDITIONAL NOTICE REQUIREMENTS:

A. The manufacturer or distributor of associated equipment shall notify the board, in writing, of any problems, defects, or malfunctions of any associated equipment that has been approved by the board if the problem, defect, or malfunction affects game integrity or is recurring.

B. The manufacturer or distributor of associated equipment must advise the board, in writing, if any other jurisdiction has revoked the approval of any associated equipment approved by the board.

C. A gaming operator licensee or applicant shall notify the board, in writing, of any material problems, defects, or malfunctions that affect the fairness or integrity of the operation or play of any associated equipment that has been approved by the board and is used by the licensee, or is proposed for use by the applicant, in the state.

D. A gaming operator licensee or applicant shall notify the board, in writing, if the approval of associated equipment approved by the board and used by the gaming operator licensee, or proposed to be used by the gaming operator license applicant, has been revoked by any other jurisdiction.
[11/30/98; 15.1.7.34 NMAC - Rn, 15 NMAC 1.7.34, 3/31/00; A, 5/15/07; 15.1.7.34 NMAC - Rn, 15.1.7.33 NMAC, 12/15/10]

[~~15.1.7.34~~] 15.1.7.35 RETENTION OF ASSOCIATED EQUIPMENT RECORDS:

A. A manufacturer or distributor of associated equipment shall maintain the following records:

(1) all applications for approval of associated equipment submitted to the board;

(2) detailed operating procedures of the associated equipment;

(3) approvals of associated equipment received from any gaming jurisdiction;

(4) a complete, comprehensive, and technically accurate description and explanation of the associated equipment and its intended use in both technical and lay language;

(5) any alterations, modifications, or revisions and the requisite approvals that have been conducted on associated equipment used by gaming operator licensees or applicants;

(6) details of tests performed on the associated equipment by the manufacturer or distributor of the associated equipment; and

(7) the revocation of any approval for associated equipment issued by any gaming jurisdiction.

B. Manufacturer, distributor, and gaming operator licensees shall maintain documentation that indicates problems, defects, or malfunctions of the associated equipment and any other information or records the board deems necessary to ensure compliance with the act and this rule.
[11/30/98; 15.1.7.35 NMAC - Rn, 15 NMAC 1.7.35, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.35 NMAC - Rn, 15.1.7.34 NMAC, 12/15/10]

[~~15.1.7.35~~] 15.1.7.36 MARKING OF GAMING MACHINES:

A. A manufacturer or distributor shall not distribute a gaming machine in New Mexico unless the machine has:

(1) a unique, permanent serial number, which shall be clearly visible and permanently stamped or engraved on the metal frame or other permanent component of the gaming machine or on a metal plate attached to the metal frame or other permanent component of the gaming machine;

(2) a metal plate that provides the manufacturer's name, model, date of manufacture, and permanent serial number of the machine; the metal plate must be attached to the cabinet of the gaming machine, and

(3) the board-issued license number and any modification approval number affixed to all program storage media placed in the machine.

B. Each manufacturer or distributor shall keep a written list of the date of each distribution, the serial numbers of the gaming machines, and the names, addresses, and telephone numbers of the persons to whom the machines have been distributed and shall provide the list to the board immediately upon request.

C. In addition to the requirements in Subsection A of [~~15.1.7.35~~] 15.1.7.36 NMAC above, no gaming operator shall place a gaming machine in a licensed premises for play unless the gaming machine bears the board-issued license number affixed to the machine. No person other than the board or its authorized employee or other agent shall affix or remove the license number.
[11/30/98; 15.1.7.36 NMAC - Rn, 15 NMAC 1.7.36, 3/31/00; A, 5/15/07; 15.1.7.36 NMAC - Rn, 15.1.7.35 NMAC & A, 12/15/10]

[~~15.1.7.36~~] 15.1.7.37 SUMMARY SUSPENSION OF APPROVAL OF GAMING DEVICES:

A. The board, with or without prior notice to the manufacturer, distributor, or licensee, may issue a summary order suspending approval of a gaming

device if the board determines that the device does not operate, or is not being operated, in the manner certified by the manufacturer or as approved by the board.

B. After issuing the summary suspension order, the board may seal or seize all modes of that gaming device and shall thereafter comply with provisions of the act and this rule governing emergency orders of the board.

[11/30/98; 15.1.7.37 NMAC - Rn & A, 15 NMAC 1.7.37, 3/31/00; A, 1/31/02; A, 5/15/07; 15.1.7.37 NMAC - Rn, 15.1.7.36 NMAC, 12/15/10]

[~~15.1.7.37~~] 15.1.7.38 MAINTENANCE, REPAIR AND SERVICING OF GAMING DEVICES:

A. A licensee shall not alter the operation of approved gaming machines or associated equipment and shall ensure that the gaming machines and associated equipment are maintained in proper condition.

B. Only the following persons shall service or repair a gaming machine or associated equipment:

(1) a licensed manufacturer;

(2) an employee of a licensed manufacturer; or

(3) a technician [~~certified by a manufacturer~~] approved by the board and employed by a [~~licensed~~] distributor or gaming operator licensee.

C. A licensed manufacturer shall maintain a certification program for the purpose of training and certifying technicians to service and repair gaming devices manufactured by the licensed manufacturer. Upon request, the licensed manufacturer shall provide evidence of such program to the board, including a full description of the program, models of gaming devices for which training is provided, criteria for certification, information concerning instructor qualifications, and copies of training materials and tests. Any program deemed insufficient by the board shall be modified at the board's request.

D. The licensed manufacturer shall ensure that its technician employees have received sufficient and appropriate training in the service and repair of each of its approved gaming machine models before the gaming machine may be placed in operation in New Mexico.

E. A licensed manufacturer that certifies other persons as technicians shall ensure that the technicians have received sufficient and appropriate training in the service and repair of the approved gaming machine to be operated by the gaming operator licensee, or distributed by the licensed distributor, employing the technician.

F. [~~Upon request by the board, the certified technician, or the licensed manufacturer, distributor, or gaming operator employing the technician, shall provide proof satisfactory to the board proof of the technician's certification.~~] A gaming operator and a licensed distributor shall establish written standards for qualifications of a gaming device technician, which shall be submitted to the board for consideration and approval. Approval of the standards shall not be unreasonably denied so long as they include manufacturer gaming device certifications or a reasonable equivalent of work experience in the gaming industry. The educational and work experience requirements may be substituted by a background in electronics and/or mechanics; a limited background in these areas may be compensated for by an in-house training program whereby the individual is closely supervised by an approved technician for a specified period of time.

(1) In order to be approved to service a gaming device, a person shall submit an application for a work permit and shall submit documentation of the qualifications required in Subsection F of 15.1.7.38 NMAC.

(2) The board shall notify the technician and their employer of whether the submitted qualifications are approved within seven days of receipt of the documentation. Notification of approval of the application for work permit shall be done by the normal process as set out in parts 15.1.5 NMAC and 15.1.13 NMAC.

G. The gaming operator licensee shall ensure that all service and repairs on its gaming machines, including the installation or repairs of component parts such as bill acceptors, monitoring systems, or other parts that would significantly alter the current or subsequent operation of a gaming machine, are made correctly and in compliance with board requirements.

H. Except for [~~certified~~] qualified technicians, no employee of the gaming operator licensee shall perform service or repairs on the licensee's gaming machines other than incidental repairs, unless such service or repairs are performed under the direct supervision of a qualified technician as part of an in-house training program approved by the board. Incidental repairs are repairs that do not affect any of the machine's major systems or require that the person making the repair access any internal space of the gaming machine.

I. The board may allow, at the board's discretion, on-site training by a [~~certified~~] qualified technician as long as the [~~technician has received the manufacturer's equivalent of certification as set forth in Subsection E of 15.1.7.37 NMAC above~~] technician's qualifications have been approved by the board. Technicians in training shall work under the direct supervision of a [~~certified~~] qualified technician and shall obtain [~~certification~~] board qualification by satisfactorily completing all required training within 30 days of employment.

J. The gaming operator licensee shall keep a [~~written maintenance~~] machine access entry log inside the main cabinet access area of each gaming machine. Every person who gains entry into any internal space of a gaming machine shall sign the [~~maintenance~~] machine entry access log, indicate the date and time of entry and list all areas inspected, repaired or serviced. The gaming operator licensee shall retain the maintenance log for a period of five years and shall make the maintenance log available to the board or its authorized agents upon request.

K. In addition to the machine entry access log required by Subsection J of this section, a gaming operator licensee shall maintain a written log in a form acceptable to the board for recording service or repairs performed on the licensee's gaming machines by qualified technicians employed by a manufacturer or distributor licensee whose principal place of business is outside the state of New Mexico. Any qualified technician employed by such a manufacturer or distributor who performs service or repairs on the gaming machines of a gaming operator shall make a complete entry on the log at the time of the service or repairs, recording, at a minimum, the name and work permit number of the qualified technician performing the service or repairs, the dates and times of the service or repairs and a brief description of the service or repairs performed.

[11/30/98; 15.1.7.38 NMAC - Rn, 15 NMAC 1.7.38, 3/31/00; 15.1.7.38 NMAC - Rn, 15.1.7.37 NMAC & A, 12/15/10]

[~~15.1.7.38~~] 15.1.7.39 LIABILITY FOR NONPAYMENT OF PRIZES: The state, the board, and their employees and agents, are not responsible for any malfunction of any gaming device, site controller, or other system or error that causes prizes to be wrongfully awarded or denied to players.

[11/30/98; 15.1.7.39 NMAC - Rn, 15 NMAC 1.7.39, 3/31/00; A, 5/15/07; 15.1.7.39 NMAC - Rn, 15.1.7.38 NMAC, 12/15/10]

[~~15.1.7.39~~] 15.1.7.40 RETENTION OF RECORDS: The licensee shall maintain all records required pursuant to this rule within New Mexico for a period of five years.

[15.1.7.40 NMAC - Rn, 15.1.7.39 NMAC, 12/15/10]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.8 NMAC, Section 8 effective December 15, 2010.

15.1.8.9 ACCOUNTING RECORDS:

A. Each licensee shall keep accurate, complete, legible, and permanent records, in the manner required or approved by the board and in accordance with either generally accepted accounting principles (U.S. GAAP), international financial reporting standards (IFRS) or other comprehensive basis of accounting, pertaining to revenue that is taxable or subject to fees under the act. Each licensee that keeps permanent records in an electronic format shall provide to the audit and compliance services division, upon request, a detailed index of computer records in a format satisfactory to the board.

B. Each licensee shall use double-entry accounting and maintain detailed subsidiary records, including the following:

(1) detailed records of revenues, expenses, assets, liabilities, and equity of the gaming establishment;

(2) gaming machine analysis reports that compare, by each machine, actual hold percentages to theoretical hold percentages;

(3) the records required either by the board's minimum standards for internal control systems or, if the board determines that the licensee's system is at least equivalent to the board's minimum standards, the records required by the licensee's system of internal control;

(4) journal entries prepared by the licensee and its independent accountant; and

(5) any other records that the board specifically requires to be maintained.

C. If a licensee fails to keep adequate gaming revenue records, the board may compute the amount of taxable revenue upon the basis of an audit conducted by the audit and compliance services division, on the basis of any information within the board's possession, upon statistical analysis, or upon any other basis deemed reasonable by the board.

D. Non-profit licensees are required to have a designated gaming accountant, who shall be found suitable as a key person by the board. The gaming accountant shall have a reasonable amount of experience in accounting/bookkeeping.

E. In the event that the designated gaming accountant cannot provide monthly financial statements and books acceptable to the board, the board may require the non-profit licensee to contract with a qualified independent bookkeeper. The qualified independent bookkeeper shall have either a minimum of two (2) years experience in performing bookkeeping and accounting duties or at least an associate's degree in accounting and one (1) year of experience in performing bookkeeping and accounting duties. The independent bookkeeper is not required to be found suitable as a key executive or to obtain a work permit so long as the bookkeeper duties are limited to preparing the gaming books and financial statements and not signing gaming forms. A qualified independent bookkeeper shall not be an officer, trustee or board member of the non-profit gaming licensee.

[12/31/98; 15.1.8.9 NMAC - Rn & A, 15 NMAC 1.8.9, 10/15/00; A, 5/14/04; A, 2/28/05; A, 12/15/10]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.9 NMAC, Sections 9 and 16 effective December 15, 2010.

15.1.9.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

A. "Act" means the New Mexico Gaming Control Act.

B. "Bill acceptor" means the optional assembly on a gaming machine that accepts valid paper currency and causes the machine to either dispense change or issue game credits.

C. "Coin-in meter" means an electronic counter that measures total coins placed in the gaming machine for a specified period of time.

D. "Coin room" means a separate, secured room or area in which coins are inventoried.

E. "Drop" means the total amount of money and tokens removed from the drop box, or for cashless gaming machines, the amount of credits deducted during play.

F. "Drop area" means the restricted room or area of the licensed premises where the drop is permitted to be conducted; the drop area may be roped off or otherwise distinctly identified as a restricted area.

G. "Drop box" or **"drop bucket"** means a container in a locked part of the gaming machine or its cabinet that is used to collect the money and tokens retained by the gaming machine that are not used to make automatic payouts from the machine.

[~~**H. "EPROM"** means erasable programmable read-only memory used for storing program instructions in a gaming device, including game programs and video graphics.~~]

[**I**] **H. "Hard count"** means the counting of coins generated by gaming operations.

[~~**J**~~] **I. "Hard drop"** means the controlled, secured process of removing coins from gaming machines.

[~~**K**~~] **J. "Hard meter"** means an internal accounting system that is displayed on mechanical meters on a gaming machine.

[~~**L**~~] **K. "Hopper"** means the assembly inside the gaming machine that receives, holds and dispenses coins.

L. "Gaming media" means any associated equipment that contains software which can only be used in a gaming device, affects game outcome and is programmed by the gaming machine manufacturer. "**Gaming media**" includes, but is not limited to, EEPROM, EPROM, compact flash, flash RAM, CD/DVD ROM or hard drive.

M. "Payout" means a patron's winnings, including money, tokens, credit to a player's account, and the actual cost to the licensee of personal property, other than travel expenses, food, refreshments, lodging, or services, distributed to a gaming machine patron as a result of a legitimate wager; "payout" also includes cash paid directly to an independent administrator by a licensee for the purchase of annuities to pay a patron's winnings over several years.

N. "Soft meter" means the internal accounting system that can be displayed on the screen of an electronic gaming machine or in the coin window on a reel gaming machine.

O. "This title" means Title 15, Chapter 1 of the New Mexico Administrative Code.

P. "Ticket printer" means a device in place of a coin-out hopper on a gaming machine that prints and dispenses a cash ticket voucher that may be redeemed by a patron for cash or a specified prize.

Q. "Weigh scale interface" means a software interface that transfers drop figures by direct line or computer storage media.

[N, 12/31/98; 15.1.9.7 NMAC - Rn, 15 NMAC 1.9.7, 1/31/02; A, 12/15/10]

15.1.9.16 [~~EPROM~~] GAMING MEDIA TESTING AND DUPLICATION:

[~~A.~~ ~~Procedures and controls shall provide that, at least once per year, tests are conducted to ensure the integrity of a sample of gaming machine game program EPROMs. Only certified technicians, manufacturers, and distributors may conduct such tests.~~]

[B] A. [~~EPROMs~~] Gaming media shall not be duplicated except with board approval, unless the person seeking to duplicate the program is a licensed manufacturer. In either case, the licensee shall ensure compliance with all applicable

federal copyright laws. Approval by the board to duplicate game program [~~EPROMs~~] gaming media does not constitute an opinion as to such compliance.

[~~C~~] B. The licensee shall develop and maintain procedures for each of the following:

(1) removal of [~~EPROMs~~] gaming media from devices, verification of the existence of errors, and correction of errors by duplication from the master game program;

(2) copying one gaming device program to another approved program;

(3) verification of duplicated [~~EPROMs~~] gaming media with electrical failures;

(4) destruction, as needed, of [~~EPROMs~~] gaming media with electrical failures or physical damage; and

(5) securing the [~~EPROM~~] gaming media duplicator and master game [~~EPROMs~~] gaming media from unrestricted access.

[~~D~~] C. Records shall be maintained documenting the procedures described in this section 15.1.9.16. The records include the date, gaming machine number for both source and destination machines, manufacturer, program number, personnel involved, reason for duplication, disposition of any permanent [~~EPROM~~] gaming media, and lab approval number.

[~~E~~] D. [~~EPROMs~~] Gaming media returned to gaming devices shall include the date and information that is identical to that shown on the manufacturer's label.

[N, 12/31/98; 15.1.9.16 NMAC - Rn, 15 NMAC 1.9.16, 1/31/02; A, 2/28/05; A, 12/15/10]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.10 NMAC, Sections 14, 24, 32 and 42 effective December 15, 2010.

15.1.10.14 UNLICENSED AND SUSPENDED GAMES OR GAMING DEVICES:

A. No unlicensed or unauthorized games shall be operated at the gaming establishment, nor shall a licensee offer for sale, distribution, or play any gaming device that shall be used in gaming without first having obtained all necessary licenses and having paid all current fees and taxes applicable to such devices.

B. A licensee who desires to temporarily remove or suspend a game from play shall give the board advance written notice of the type and number of games sought to be suspended and the beginning date and duration of the proposed suspension. In addition, the licensee shall physically remove the gaming device from any area accessible by members, in the case of a nonprofit operator licensee, or the public, in the case of a racetrack gaming operator licensee, and place it in a secured area approved by the board. [~~However, a gaming device may remain on the licensed premises while in a suspended status if the licensee removes all detachable fixtures such as drop boxes and similar removable items~~]. Thereafter, the board shall un-enroll the gaming device from the central monitoring system and periodically inspect [~~and seal~~] the gaming device and allow it to remain on the licensed premises during the suspension period not to exceed 30 days. Temporary removal of a gaming device under this subsection shall not exceed 60 days.

C. Before any suspended game or gaming device shall be reactivated and placed into play, the licensee shall:

(1) advise the board in writing of the licensee's intention and date to reactivate such game or gaming device;

(2) pay all applicable fees and taxes; and

(3) offer the game or gaming device for play following the board's reinspection and central monitoring system enrollment of the [~~sealed~~] gaming device.

D. If a gaming operator licensee shall remove a gaming machine from the gaming area due to suspected cheating, tampering, or malfunction, the gaming operator:

(1) shall immediately notify the board's enforcement and information systems on-call personnel by telephone of the temporary removal and file a written report within five days; remove the gaming machine to a secure location as directed by the board; and ensure that the gaming machine is secured during any investigation deemed necessary by the board or its agent;

(2) may temporarily replace the removed gaming machine with a pre-approved gaming machine obtained from a licensed distributor or manufacturer, provided the gaming operator licensee and licensed distributor or manufacturer fully disclose the terms of the temporary replacement and provided the terms are satisfactory to the board; and

(3) shall notify the board of the date on which the removed gaming machine will be returned to play and provide proof satisfactory to the board that the replacement gaming machine has been removed from the licensed premises and returned to the distributor.

[12/31/98; 15.1.10.14 NMAC - Rn, 15 NMAC 1.10.14, 3/31/00; A, 2/28/05; A, 12/15/10]

15.1.10.24 AUTHORIZED GAMES; GAME REQUIREMENTS:

A. Limited gaming permitted pursuant to Section 60-2E-2(A) of the act shall include only the play of approved games on licensed gaming machines. Table games, side bets, unapproved games, and all other forms of unauthorized gaming are expressly prohibited.

B. No game shall be played on a licensed premises until the board has authorized the game in conformity with the gaming operator applicant's or licensee's approved business plan and the gaming machine has been connected and transmitting satisfactorily to the board's central monitoring system.

C. The following games, one or more of which may be simulated on a single gaming machine, are approved for play on a licensed premises:

(1) draw poker;

(2) keno;

(3) blackjack;

(4) line-up symbols and numbers;

(5) any other game authorized by the board.

D. A racetrack gaming operator licensee may operate licensed multi-station games provided it meets the following conditions:

(1) the racetrack gaming operator licensee shall notify the board of its intent to place multi-station games on the gaming premises, and obtain approval of the board or its designee prior to placing the games on the gaming premises;

(2) the racetrack gaming operator licensee shall apply for and obtain licensure for each multi-station game; for purposes of this subsection, each multi-station game shall count as one (1) gaming machine;

(3) no multi-station game shall have more than fifteen (15) player terminals;

(4) multi-station games shall not comprise more than three (3) percent of the total possible allowed gaming machines on the gaming floor; for purposes of this subsection, each multi-station game having up to five (5) player terminals shall count as one (1) gaming machine, each multi-station game having between six (6) and ten (10) player terminals shall count as two (2) gaming machines and each multi-station game having between eleven (11) and fifteen (15) gaming machines shall count as three (3) gaming machines.

E. Each multi-station game operated by a racetrack gaming operator licensee shall comply with 15.1.7. NMAC . where applicable, and the following additional technical specifications:

(1) each individual player terminal shall be capable of being independently monitored by the central monitoring system;

(2) each multi-station game shall have one (1) random number generator;

(3) each multi-station game shall have one (1) master terminal which houses

the logic area and game display, and which is shared among all player terminals;

(4) the player terminals of the multi-station game shall have no means to independently determine game outcomes;

(5) each multi-station game shall be configured so that it cannot be disconnected from the gaming device central processing unit that determines the game outcomes for all player stations without rendering that terminal inoperable;

(6) multi-station games shall only permit players to play against the house.

[12/31/98; 15.1.10.24 NMAC - Rn, 15 NMAC 1.10.24, 3/31/00; A, 12/28/01; A, 2/28/05; A, 12/15/10]

15.1.10.32 USE OF GAMING RECEIPTS BY NONPROFIT OPERATOR LICENSEE:

A. A nonprofit operator licensee may utilize up to 65% of net take, after payment of the gaming tax and income taxes, to pay allowable expenses in reasonable amounts for conducting gaming activities on its licensed premises. If the nonprofit operator licensee has entered into a valid lease or other arrangement for furnishing gaming machines, the 65% maximum shall be distributed as follows:

(1) the maximum of 40% of net take after gaming taxes or no greater than the contract amount if less than 40% for payment to licensed distributors pursuant to a lease or other arrangement for furnishing a gaming machine; and

(2) for payment of other allowable gaming expenses, an amount equal to the difference between 65 % of net take less the amount paid to the distributor as described above.

B. The percentage set forth in this section constitutes the maximum amount that may be paid annually for allowable gaming expenses from net take. No other expenses related to or arising out of gaming activities shall be paid from net take or gaming revenues, including but not limited to supplies, fees for management and other services, and repairs to and maintenance of licensed premises and gaming devices.

C. A nonprofit operator licensee shall not under any circumstances pay to any distributor licensee the percentage payment allowed in this section, until the required charitable and educational deposits have been made, gaming tax and other applicable taxes have been paid and [~~provided~~]all taxes and fees are current.

D. The nonprofit operator licensee shall distribute at least 60% of the balance of net take to charitable or educational purposes, which purposes do not include gaming expenses. All funds required to be spent for charitable or educational purposes must be expended each year within 120 days after close of the nonprofit operator licensee's fiscal year end. The maximum 40% of net take, after gaming taxes, remaining after such distribution may be used for other expenses at the discretion of the nonprofit operator licensee, provided none of those expenses shall be incurred to compensate a licensed distributor for the furnishing of gaming machines.

E. Distributions for charitable purposes shall be made solely for benevolent, social welfare, philanthropic, humane, public health, civic or other objectives or activities to benefit the welfare of the public at large or an indefinite number of persons.

(1) Charitable distributions shall not be used to fund operating or capital expenses of any nonprofit gaming operator or any affiliated organization of a nonprofit gaming operator.

(2) A charitable distribution shall be made to an organization outside the state of New Mexico only if the organization is either a charitable organization under Section 501(c)(3) of the Internal Revenue Code or the organization is the nonprofit gaming operator's national organization and the distribution is used for charitable purposes.

F. Educational distributions shall be expended solely to benefit an educational institution or organization or to provide financial assistance to individuals in their pursuit of educational goals.

G. The executive director of the board shall disallow any distribution for charitable and educational purposes not in compliance with this rule. If a charitable or educational distribution is disallowed by the executive director, the nonprofit gaming operator may appeal that decision to the board pursuant to Section 60-2E-59 of the act.

[12/31/98; 15.1.10.32 NMAC - Rn & A, 15 NMAC 1.10.32, 3/31/00; A, 7/31/02; A, 5/14/04; A, 2/28/05; A, 5/15/07; A, 12/15/10]

15.1.10.42 MINIMUM LIVE RACE DAYS AND RACES:

A. A racetrack gaming operator's license shall become automatically void if the racetrack fails to maintain a minimum of four live race days a week with at least nine live races on each race day during its licensed race meet.

B. Maintaining fewer than four live race days or nine live races on each race day during a licensed race meet does not constitute a failure to maintain the minimum number of live race days or races required by [~~Section 60-2E-28 (B)~~] Section 60-2E-27(B) of the act or these rules if the licensee submits to the board written approval by the racing commission for the licensee to vary the minimum number of live race days or races, and the variance is due to any of the following:

(1) inability of a racetrack gaming operator licensee to fill races as published in the licensee's condition book;

(2) severe weather or other act, event or occurrence resulting from natural forces;

(3) strikes or work stoppages by jockeys or other persons necessary to conduct a race or meet;

(4) power outages, electrical failures, or failure or unavailability of any equipment or supplies necessary to conduct a race or meet;

(5) hazardous conditions or other threats to the public health or safety; or

(6) any other act, event or occurrence that is not within the control of the licensee even with the exercise of reasonable diligence or care.

C. Failure of a racetrack gaming operator licensee to submit to the board written approval by the racing commission of a variance in the licensee's live race days or races constitutes a failure to maintain the minimum number of live races required by the act and these rules regardless of the cause for the variance.

D. Upon determination by the board that a racetrack gaming operator licensee has failed to maintain the minimum number of live race days or races as required by the act and these rules:

(1) the gaming operator's license shall become automatically void and of no legal effect;

(2) the gaming operator licensee shall immediately cease the conduct of all gaming activity;

(3) the board will immediately disable all gaming devices on the gaming operator licensee's premises or under the gaming operator licensee's control and shall take the gaming devices into the board's custody in a manner to be determined by the board.

E. A racetrack gaming operator licensee whose license has been voided may apply for a new license from the board at any time. The application for licensure shall be processed in the same manner as a new application. The applicant shall submit all required forms, including but not limited to license and key person applications, and shall pay all applicable fees and costs.

F. Voiding of a license by the board pursuant to Section 60-2E-27(B) of the act and these rules does not constitute a denial, permanent suspension or revocation of the license for cause by the board or a limiting action by the board on the gaming operator licensee.

[15.1.10.42 NMAC - N, 10/15/00; A, 2/28/05; A, 12/15/10]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.13 NMAC, Sections 8, 9, 10 and 12 effective December 15, 2010

15.1.13.8 [~~ANNUAL~~] RENEWAL OF LICENSE OR WORK PERMIT:

A. Licenses issued under the act, other than gaming machine licenses, [~~and certifications of findings of suitability~~] expire one year from the date of the issuance of the license, and are subject to annual renewal in accordance with the act and this rule.

B. A complete renewal application and payment of all applicable fees for renewal of a license shall be filed with the board not less than sixty (60) days prior to the date the license expires. The renewal application shall be submitted on forms provided by the board. Gaming operator licensees shall submit compulsive gambling plans with the renewal application.

C. In addition to any other information required, the renewal application for a nonprofit organization gaming operator license shall include a copy of its amended charter, if any, articles of incorporation, bylaws, or rules that establish regular or auxiliary membership requirements. The board may deny a license renewal application if it determines that any amendment has opened, or may open, gaming activity to persons beyond those authorized under the act.

D. In addition to any other information required, the renewal application for a racetrack gaming operator license shall include proof that the racetrack holds an active license to conduct pari-mutuel wagering. The application also shall include a copy of the racetrack's schedule of live races on each race day during its licensed race meet for the renewal year. If the schedule of live races for the entire renewal year has not been approved by the date the renewal application is filed with the board, the racetrack gaming operator licensee shall submit a schedule of live race days currently approved by the racing commission, and shall submit a proposed schedule of additional race days for the license year with the renewal application and shall submit a final schedule for the remainder of the license year within 15 days of approval by the racing commission.

E. The board may deny a license renewal application if the applicant is delinquent in the payment of any installment of the gaming tax or the payment of any other fees, fines, costs, or penalties imposed by the state, the liability for which arises out of any previous or current application to conduct, or out of the conduct of, gaming activity in the state.

F. A work permit expires [~~one~~] three years from the date of issuance. A complete renewal application and payment of all applicable fees for renewal of the work permit shall be filed with the board not less than ten (10) days prior to the date the work permit expires. The renewal application shall be submitted on forms provided by the board.

[12/31/98; 15.1.13.8 NMAC - Rn & A, 15 NMAC 1.13.8, 3/31/00; A, 1/31/02; A, 11/30/05; A, 12/15/10]

15.1.13.9 RENEWAL FEES:

A. Renewal license fees are as follows:

(1) gaming machine [~~or associated equipment~~] manufacturer's license, $2,000;

(2) associated equipment manufacturer's license, $400.00;

[~~**(2)**~~]**(3)** gaming machine or associated equipment distributor's license, $400;

[~~**(3)**~~]**(4)** gaming operator's license for racetrack, $4,000;

[~~**(4)**~~]**(5)** gaming operator's license for nonprofit organization, $100;

[~~**(5)**~~]**(6)** gaming machine license, $25 per machine;

[~~**(6)**~~]**(7)** work permit, $[~~25~~] 75; and

[~~**(7)**~~]**(8)** certification of finding of suitability, $[~~25~~] 75.

B. Any renewal application shall be deemed incomplete, and shall be subject to late fees and penalties, if the applicant does not include full payment for the license renewal fee with the application or if the applicant's check is returned due to insufficient funds.

C. The board or its designee may prorate the license fee in cases it deems appropriate.

D. In addition to the renewal fee paid, an applicant for renewal of a certification of finding of suitability as a key person for a racetrack gaming operator, manufacturer or distributor shall pay all supplementary investigative fees and costs.

E. An applicant for renewal of a certification of finding of suitability as a key person for a racetrack gaming operator, manufacturer or distributor shall reimburse the board in an amount sufficient to cover actual fees and costs of any investigation within 30 days of receipt of notice of actual fees and costs incurred by the board in conducting a background investigation of the applicant.

F. An applicant for renewal of a certification of finding of suitability for a nonprofit gaming operator shall not be assessed investigative fees and costs.

[12/31/98; 15.1.13.9 NMAC - Rn, 15 NMAC 1.13.9, 3/31/00; A, 11/30/05; A, 5/15/07; A, 8/30/07; A, 12/15/10]

15.1.13.10 LATE RENEWAL OF LICENSE, CERTIFICATION OR WORK PERMIT:

A. The board may, in its discretion, accept and process a renewal application for a gaming operator's, manufacturer or distributor's license, work permit or certification of finding of suitability filed after the [~~deadline~~] deadlines established in [~~section~~] 15.1.13.8 [~~above~~] and 15.1.13.13 NMAC. Any such application [~~,however,~~] for a racetrack gaming operator's, manufacturer's or distributor's license, shall be subject to a late renewal fee of $250 plus $10 per day for each additional day the renewal application is late. Any such application for a nonprofit gaming operator's license shall be subject to a late renewal fee of $150 plus $10 per day for each additional day the renewal application is late.

B. To allow sufficient processing time by the board, no renewal application for a gaming operator's, manufacturer or distributor's license, or for a certification of finding of suitability shall be accepted by the board less than 45 days of the expiration date of the license, regardless of whether the [~~licensee~~] applicant for renewal pays late fees. Any [~~licensee~~] applicant for renewal who fails to submit a complete renewal application at least 45 days before the expiration date of his or her license or certification of finding of suitability shall be required to file a full application for [~~licensure~~] and pay all applicable fees and investigation costs if that person desires to engage in the conduct of gaming activities.

C. If an applicant for a racetrack gaming operator's, manufacturer's or distributor's license applies for such license, permit or certification within 30 days after the expiration of a previously held license, permit or certification, in addition to initial application fees, the applicant will be charged a fee of $250.00 plus $10.00 for each day that has passed since the expiration date until the new application is filed. If an applicant for a nonprofit gaming operator's license, or for a work permit or certification of finding of suitability applies for such license, permit or certification within 30 days after the expiration of a previously held license, permit or certification, in addition to initial application fees, the applicant will be charged a fee of $150.00 plus $10.00 for each day that has passed since the expiration date until the new application is filed.

[12/31/98; 15.1.13.10 NMAC - Rn & A, 15 NMAC 1.13.10, 3/31/00; Repealed, 1/31/02; 15.1.13.10 NMAC - Rn, 15.1.13.11 NMAC, 1/31/02; A, 5/14/04; A, 11/30/05; A, 12/15/10]

15.1.13.12 RENEWAL LICENSE PERIOD: [~~To provide for a transition~~

~~between a calendar-year and an anniversary date renewal of all licenses issued under the act, all licensees seeking to renew their licenses for 2006 shall submit a renewal application together with all applicable fees on or before November 1, 2005.~~

~~**A.** If the anniversary date of a licensee's original license is during the first quarter of 2006, the board shall extend the licensee's 2005 license until the anniversary date, at which time a renewal license will be issued, provided the licensee meets all requirements for renewal.~~

~~**B.** If the anniversary date of the licensee's original license is in the second, third or fourth quarter of 2006, the board shall renew the license on January 1, 2006, provided the licensee meets all the requirements for renewal. A renewal license issued by the board on January 1, 2006 shall be valid for the period beginning on the date of issuance and ending on the anniversary of the date during the 2006 calendar year that the license originally was issued.~~

~~**C.** Thereafter, all renewed licenses will expire annually on the anniversary date of the original issuance and will be subject to renewal on an anniversary date basis.~~

~~**D.** During the transition period the board will prorate the license fee in cases it deems appropriate according to the calendar quarter in which the application was received.~~] All licenses shall expire annually on the anniversary date of the original issuance and will be subject to renewal on an anniversary date basis.

[12/31/98; 15.1.13.12 NMAC - Rn, 15 NMAC 1.13.12, 3/31/00; 15.1.13.12 NMAC - Rn, 15.1.13.13 NMAC, 1/31/02; A, 11/30/05; A, 12/15/10]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.16 NMAC, Section 7, 8, 9, 10, 13 and 14 effective December 15, 2010.

15.1.16.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

A. "Act" means the New Mexico Gaming Control Act.

B. "~~[EPROM]~~ Gaming media" means [~~erasable programmable read-only memory used for storing program instructions in a gaming device, including game programs and video graphics~~] any associated equipment that contains software that can only be used in a gaming machine, affects game outcome and is programmed by the gaming machine manufacturer. Gaming media includes, but is not limited to an EEPROM, EPROM, compact flash memory, flash RAM, CDROM or hard drive.

C. "Licensed premises" means the area that has been approved for gaming on the premises, that is under the direct control of a gaming operator licensee and from which the licensee is authorized to operate and permit the play of gaming machines.

D. "Person" means a legal entity or an individual.

E. "Premises" means the land together with all building's improvements and personal property located on the land.

F. "State" means the state of New Mexico.

G. "This title" means Title 15, Chapter 1 of the state administrative code.

[N, 12/31/98; 15.1.16.7 NMAC - Rn & A, 15 NMAC 1.16.7, 10/15/00; A, 2/28/05; A, 12/15/10]

15.1.16.8 RESTRICTION ON SALES, DISPLAY, DISTRIBUTION, TRANSPORTATION AND OPERATION OF GAMING DEVICES:

A. Except as otherwise provided in this [~~rule~~] chapter, no person shall sell, display, store, supply, ship, transport, or distribute any gaming device or associated equipment for use or play in the state, and no person shall sell, display, supply, ship, transport or distribute any gaming device or associated equipment out of the state, unless the person is licensed by the board as a distributor or manufacturer.

B. No licensee shall sell or transfer a gaming device to any person that could not lawfully own or operate the gaming device.

C. No purchaser or transferee shall operate a gaming machine without first obtaining a gaming operator's license in the manner set forth in this title.

[N, 12/31/98; 15.1.16.8 NMAC - Rn, 15 NMAC 1.16.8, 10/15/00; A, 2/28/05; A, 12/15/10]

15.1.16.9 TRANSPORTATION OF GAMING DEVICES INTO THE STATE:

A. No person shall initiate transport of any gaming device into the state other than a licensed manufacturer or distributor.

~~[A]~~ B. A gaming device is shipped or transported into the state when the starting point for shipping or transporting begins outside the state and terminates in the state.

C. A manufacturer or distributor licensee shipping or transporting one or more gaming devices into the state shall notify the board's information systems division of the shipment prior to the time the shipment is made.

D. Notice of transportation of gaming device(s) shall be made on forms approved by the board for transportation of the type of gaming device(s) to be transported.

~~[B]~~ E. [~~A licensed manufacturer shipping or transporting a gaming device into the state~~] The transportation form shall [~~provide~~], at a minimum, include the following information[~~to the board prior to shipment, on forms provided or approved by the board~~]:

(1) the full name, address, and license number of the person making the shipment;

(2) the method of shipment and the name of the carrier, if any;

(3) the full name, address, and license number of the person to whom the devices are being sent and the destination of the shipment, if different from the address;

(4) the number of gaming devices in the shipment;

(5) the serial number of each gaming device;

(6) the model number and description of each gaming device;

(7) the expected arrival date of the gaming devices at their destination within the state; and

(8) such other information as required by the board.

[~~**C.** Each EPROM transported into the state shall be delivered to the board by the manufacturer licensee for inspection and testing prior to delivery to the gaming operator licensee. Upon satisfactory completion of inspection and testing, the board shall notify the distributor or gaming operator licensee designated to receive the EPROM. No EPROM shall be delivered to a distributor or gaming operator licensee without prior inspection and approval in writing by the board. Any distributor or gaming operator licensee receiving any EPROM directly from the manufacturer shall notify the board immediately.~~]

F. Transportation forms shall be filled out completely and legibly, signed by the person completing the form and notarized. The completed forms shall be transmitted to the board's information systems division by faxing or e-mailing a copy of the form to the division.

G. The board's information systems division shall assign a control number to the transportation form and notify the manufacturer or distributor licensee shipping the device(s) of the assigned control number within three (3) business days of receipt of the completed transportation form.

H. The manufacturer or distributor licensee may ship the gaming device to the receiving licensee upon receipt of the control number by the board. The shipping licensee shall note the assigned control number on the transportation form

for the device and shall include the original transportation form in the shipment.

I. The manufacturer or distributor licensee shall not transport gaming machines with gaming media already installed in the machines.

J. A licensee receiving shipment of a gaming device shall notify the board's enforcement division of the receipt of the shipment. Following notification an agent of the board's enforcement division shall inspect the shipment and the transportation form included with the shipment to ensure that the transportation form accurately identifies the gaming device(s) included in the shipment.

K. A licensee receiving a shipment of gaming media or other associated equipment shall not remove the gaming media or associated equipment from the packaging in which the it was shipped until an agent of the board has inspected the shipment and released it to the receiving licensee. A licensee receiving shipment of a gaming machine shall notify the board upon receipt of the shipment and shall not remove the gaming machine from the transporting vehicle until authorized by the board. A gaming machine transported into the state shall not be placed on the gaming floor for play until an agent of the board has inspected the gaming machine and released it for play.
[N, 12/31/98; 15.1.16.9 NMAC - Rn & A, 15 NMAC 1.16.9, 10/15/00; A, 1/31/02; A, 2/28//05; A, 12/15/10]

15.1.16.10 RECEIPT OF GAMING DEVICES IN THE STATE:

A. Any person in the state that receives a gaming device shall, upon receipt of the gaming device, provide the board with the following information on forms provided or approved by the board:

(1) the full name, address, and license number of the person receiving the gaming device;

(2) the full name, address, and license number of the person from whom the gaming device was received;

(3) the date of receipt of the gaming device;

(4) the serial number of each gaming device;

(5) the model number and description of each gaming device;

(6) the manufacturer of the gaming device;

(7) the location where the gaming device will be placed and the license number of the licensed premises;

(8) the expected date and time of installation of the gaming device at the new location; and

(9) such other information as required by the board.

B. If the gaming [~~device shall~~] machine is not to be placed in operation within five days of its receipt, the [~~person~~] licensee who received the gaming device shall [~~notify the board of the address where the gaming device is warehoused~~] comply with the requirements of 15.1.16.11 NMAC relating to storage of gaming machines. The [~~warehouse~~] location where any gaming machine is stored shall be approved in advance by the board. [~~At the time the gaming device is removed from inventory and transported to another location within the state, the owner shall comply with the requirements in section 15.1.16.11 NMAC of this rule.~~]

C. Prior to transporting a stored gaming machine from one location to another location within the state, the licensee shipping the gaming machine shall comply with the requirements of 15.1.16.11 NMAC relating to intra-state transportation of gaming machines.
[N, 12/31/98; 15.1.16.10 NMAC - Rn, 15 NMAC 1.16.10, 10/15/00; A, 2/28/05; A, 12/15/10]

15.1.16.13 REGISTRATION AND STORAGE OF GAMING MACHINES:

A. A gaming operator licensee who maintains one or more gaming machines in storage in excess of the number of machines the licensee is statutorily authorized to operate shall register those machines with the board on forms approved by the board within 72 hours of the receipt of such machine.

B. Each machine registered by a gaming operator licensee shall be subject to an annual registration fee equal to the amount of the current gaming machine licensure fee. Registration of each gaming machine shall expire on the December 31st of each year, and shall be renewable by re-registration and payment of a fee equal to the amount of the current gaming machine licensure renewal fee.

C. A gaming operator licensee that maintains registered gaming machines in storage shall adhere to the following conditions:

(1) The licensee shall ensure that each stored machine is registered with the board and that registration fees are current.

(2) Gaming media shall be stored in a limited access area separate from stored gaming machines and accessible only by restricted keys

(3) The licensee shall maintain each machine in a safe and secure locked, limited access storage area with restricted keys.

(4) Gaming machine keys for stored machines shall be maintained in an area separate from the stored gaming machine.

(5) The licensee shall supply the with board with a list of individuals having access to the storage areas, and shall update the list if any changes are made.

(6) The licensee shall maintain continuous recorded surveillance of the storage area.

(7) The licensee shall make the storage area available for inspection upon request of the board or one of its agents.

(8) The licensee shall develop internal controls acceptable to the board to ensure the safety and security of stored gaming machines.

D. The licensee shall notify the board in writing prior to movement of a gaming machine out of storage for any reason. A gaming machine from storage shall be subject to licensing requirements and fees required by 15.1.5.18 and 15.1.5.21 NMAC except that an additional gaming machine license fee shall not be required until the license is renewed.

E. A gaming operator licensee that maintains one or more gaming machines solely for the solely to provide spare parts is not required to license such machines or pay a registration fee, but shall register such machines on forms approved by the board.

F. Each racetrack gaming operator shall maintain an inventory of all gaming machines on its premises and shall identify them as operable or non-operable, and in storage or in use. The licensee shall provide such information to the board upon request.

G. A distributor or manufacturer that maintains a physical presence in the state and which maintains gaming machines in storage shall not be required to license such machines or pay a registration fee, or to keep its storage facility under surveillance, but shall otherwise comply with Subsection C of this section.
[N, 12/31/98; 15.1.16.13 NMAC - Rn, 15 NMAC 1.16.13, 10/15/00; A, 2/28/05; 15.1.16.13 NMAC - N, 12/15/10]

[~~15.1.16.13~~]15.1.16.14 PLACEMENT OF GAMING MACHINES:

A. All gaming machines at a licensed premises shall be physically located as follows:

(1) in an area that is at all times monitored by the owner, manager, or a gaming employee to prevent access or play of the gaming machines by persons under the age of 21;

(2) in an area that ensures that public access to the gaming machines is restricted to persons legally entitled to play the gaming machines at the licensed premises; and

(3) in the sight and control of the owner, manager, or a gaming employee.

B. The initial placement of gaming machines on a licensed premises shall be approved by the board in accordance

with the business plan submitted by the applicant pursuant to board rule 15.1.5 NMAC.

C. Any relocation of the gaming machine within the licensed premises constitutes modification of the licensed premises and requires prior approval by the board pursuant to rule 15.1.6 NMAC.

D. Licensed manufacturers and distributors may store and display, and persons certified pursuant to this title shall repair, gaming machines only at locations approved in advance by the board.

[N, 12/31/98; 15.1.16.14 NMAC - Rn, 15 NMAC 1.16.14, 10/15/00; A, 1/31/02; A, 2/28/05; 15.1.16.14 NMAC - Rn, 15.1.16.13 NMAC, 12/15/10]

[~~15.1.16.14~~]15.1.16.15 DISPOSAL OF GAMING MACHINES:

A. A gaming machine shall be disposed of only with the board's approval and only if the manner of disposition makes the machine incapable of use or operation. Any person seeking to dispose of a gaming machine shall notify the board in writing prior to disposal and provide the following information:

(1) the full name, address, and license number of the person seeking to dispose of the gaming machine;

(2) the serial number of the gaming machine;

(3) the model number and description of the gaming machine;

(4) the manufacturer of the gaming machine;

(5) the gaming machine license number;

(6) the gaming machine's hard meter readings;

(7) the location of the gaming machine;

(8) the proposed manner, time, and place of disposal; and

(9) any other information required by the board.

B. Unless the board notifies the person seeking to dispose of the gaming machine within 30 days of receipt of the notice required by this section, the method of disposal shall be deemed approved.

C. The person seeking to dispose of a gaming machine shall submit to the board, within 10 days of disposal, a sworn affidavit verifying the date, time, place, and manner of disposal and the names of all persons witnessing the disposal.

[15.1.16.15 NMAC - Rn, 15.1.16.14 NMAC, 12/15/10]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.24 NMAC, Section 14 effective December 15, 2010.

15.1.24.14 ANNUITIES:

A. Payments of progressive jackpots exceeding $50,000 may be paid in annual equal installments over periods and in amounts set forth in [~~Title 15, Chapter 1, Part 24, paragraph 26 of the New Mexico Administrative Code~~] 15.1.10.26 NMAC or as otherwise approved by the board or its designee. A progressive gaming machine paying by annuity shall have a notice prominently posted on it that the jackpot will be paid over time. The posted notice also shall disclose the number of payments and the time interval between the payments. The first payment shall be made immediately after verification of the jackpot as set forth in this part.

B. Progressive jackpots that are to be paid by annuities shall be reviewed and verified in writing submitted to the board by an independent certified public accountant prior to payment of any amount due.

C. A racetrack gaming operator licensee that is liable for payment of an annuity, cash, or other prize with a cash value exceeding $50,000 shall secure the amount by a cash deposit, irrevocable bond, irrevocable letter of credit, irrevocable trust, or other security instrument satisfactory to the board or its designee.

[15.1.24.14 NMAC - N, 5/31/00; A, 5/15/07; A, 12/15/10]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to Sections 8 and 9 of 8.139.502 NMAC, effective 01/01/11.

8.139.502.8 STATE FOOD STAMP SUPPLEMENT BENEFITS

A. Purpose: The state food stamp supplement program is aimed at providing the elderly and disabled with increased food purchasing power resulting in better nutrition.

B. Maximum benefit amount: The benefit amount shall be established by the HSD secretary based on available state funds.

C. Eligibility process: The state food stamp supplement shall be determined only for households that meet all eligibility requirements identified in Subsection D of 8.139.502.8 NMAC.

D. Eligibility requirements: The state food stamp supplement benefits shall be subject to all federal food stamp application, eligibility, certification and reporting requirements. The state food stamp supplement benefits shall be extended only to a household with a federal allotment amount less than [~~$30.00~~] $25.00 federal food stamp benefits and meeting the program requirements. State food stamp supplement benefits shall be provided to a household under the following qualifications and eligibility requirements:

(1) all household members qualify and receive federal food stamp program benefits;

(2) all household members are elderly or disabled as defined in Subsection A of 8.139.100.7 NMAC;

(3) the household does not receive any earned income; and

(4) the household receives a federal food stamp program allotment amount, prior to any claim recoupment, of less than [~~$30.00~~] $25.00.

[8.139.502.8 NMAC - N, 08/30/07; A, 04/15/09; A, 01/01/11]

8.139.502.9 DETERMINING THE BENEFIT

A. Application: A household shall not be required to submit an application in addition to the application for federal food stamp benefits to qualify or be determined eligible for the state food stamp supplement amount.

B. Eligibility determination: Eligibility shall be determined for a household meeting all eligibility requirements at:

(1) the time of application approval;

(2) the time of recertification;

(3) the month following a reported change which qualifies the household; or

(4) the month following a change that becomes known to the agency in which the change qualifies the household; or

(5) at time of implementation of this program.

C. Calculating the state food stamp supplement amount: A household qualified and eligible for the state food stamp supplement shall receive a state supplement to the federal food stamp allotment amount to a maximum of [~~$30.00~~] $25.00 per month before any recoupments and overpayments have been applied to the benefit amount.

(1) Application month: The state food stamp supplement shall be determined by subtracting the federal FSP benefit amount, after the federal FSP benefit is prorated and prior to any recoupment, from [~~$30.00~~] $25.00. The state food stamp supplement shall not be prorated.

(2) Ongoing month: The state food stamp supplement shall be determined by subtracting the federal FSP benefit

amount, prior to any recoupment, from [~~$30.00~~] $25.00.

(3) Eligibility for a prior month:

(a) The state food stamp supplement shall not be provided to a household for a benefit month prior to July, 2007.

(b) A household in which the federal benefit amount is adjusted for a prior month may be eligible for the state food stamp supplement provided the household qualifies and is eligible for the supplement.

(4) Current FSP households: Households which meet the qualifications and eligibility requirements for the state food stamp supplement shall be eligible for the supplement without any action required by the household. The household shall be eligible for a supplement for any month beginning July 2007 and after upon implementation of the program for which the household qualifies.

D. Ineligibility: A household shall become ineligible for the state food stamp supplement if the household does not meet the eligibility requirements specified in 8.139.502.8 NMAC the month following the month the notice of adverse action expires. The household's eligibility for the state food stamp supplement shall be made at the time of:

(1) application approval;

(2) recertification;

(3) a reported change;

(4) a change becomes known to the agency; or

(5) at the time of a mass change.

E. Notice: A household that qualifies and is eligible for food stamp benefits shall be issued notice in accordance with 8.139.110.14 NMAC. A notice of adverse action shall not be considered if the household federal food stamp and state food stamp supplement does not decrease below [~~$30.00~~] $25.00. A household that qualifies and is eligible for the state food stamp supplement shall be issued a notice for the following circumstances:

(1) Approval: A household shall be issued an approval notice at the time the household is determined eligible for the state food stamp supplement. The approval notice shall identify the amount of the state food stamp supplement.

(2) Benefit change: A household shall be issued a notice at the time the state food stamp supplement is increased or decreased. The amount of benefit is subject to change when the federal food stamp benefit is increased or decreased.

(3) Ineligibility: A household shall be issued a notice when the household no longer qualifies or is eligible for the state food stamp supplement as indicated in Subsection D of 8.139.502.8 NMAC.

[8.139.502.9 NMAC - N, 08/30/07; A, 04/15/09; A, 01/01/11]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

8.314.2 NMAC, Disabled and Elderly Home and Community-Based Services Waiver, filed July 18, 2006 is repealed and replaced with 8.307.18 NMAC, CoLTS 1915 (c) Home and Community-Based Services Waiver, effective December 15, 2010.

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES
CHAPTER 307 COORDINATED LONG TERM SERVICES
PART 18 COLTS 1915 (C) HOME AND COMMUNITY-BASED SERVICES WAIVER

8.307.18.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[8.307.18.1 NMAC - N, 12-15-10]

8.307.18.2 SCOPE: The rule applies to the general public.
[8.307.18.2 NMAC - N, 12-15-10]

8.307.18.3 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 HSD pursuant to state statute. See NMSA 1978, Section 27-2-12 et seq.
[8.307.18.3 NMAC - N, 12-15-10]

8.307.18.4 DURATION: Permanent.
[8.307.18.4 NMAC - N, 12-15-10]

8.307.18.5 EFFECTIVE DATE: December 15, 2010, unless a later date is cited at the end of a section.
[8.307.18.5 NMAC - N, 12-15-10]

8.307.18.6 OBJECTIVE: The objective of this rule is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, provider responsibilities, eligible recipients, covered services, non-covered services, ISP, prior authorization and utilization review and provider reimbursement.
[8.307.18.6 NMAC - N, 12-15-10]

8.307.18.7 DEFINITIONS: [RESERVED]

8.307.18.8 MISSION STATEMENT: 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.
[8.307.18.8 NMAC - N, 12-15-10]

8.307.18.9 COLTS 1915 (C) HOME AND COMMUNITY-BASED SERVICES WAIVER (CCW): To help New Mexicans who are disabled or elderly receive services in a cost-effective manner, HSD, medical assistance division (MAD or medicaid) has obtained a home and community-based services (HCBS) waiver, formerly known as the disabled and elderly (D&E) HCBS waiver, now called coordinated long-term care services waiver. The CoLTS 1915 (c) waiver (CCW) provides home and community-based services to eligible recipients who are disabled or elderly, as an alternative to institutionalization. This waiver program is offered under the coordination of long term services (CoLTS) program. The CoLTS program is administered by HSD/MAD through contracts with managed care organizations (MCOs). The CoLTS MCO's are responsible for providing service coordination to waiver recipients.
[8.307.18.9 NMAC - N, 12-15-10]

8.307.18.10 ELIGIBLE PROVIDERS:

A. Eligible independent providers and provider agencies must be approved by medicaid or medicaid's designee, the CCW state-operating agency, aging and long-term services department/elderly and disabilities services division (ALTSD/EDSD). The provider must have an approved medicaid provider participation agreement with Medicaid and an approved provider agreement with ALTSD/EDSD.

B. Individual service providers participate as employees or contractors of approved agencies, except as otherwise recognized by these regulations. Providers may subcontract only with individuals who are qualified and must follow the general contract provisions for subcontracting.

C. Providers are required to follow state licensing regulations, as applicable. This includes, but is not limited to nurses, social workers, physical therapists (PTs), physical therapy assistants (PTAs), occupational therapists (OTs), certified occupational therapy assistants (COTAs), and speech language pathologists (SLPs). Refer to the New Mexico regulation and licensing department for information regarding applicable licenses.

D. Once enrolled, providers receive information including medicaid program policies, and other pertinent

materials from medicaid and ALTSD/EDSD. As medicaid or ALTSD send new materials, providers are responsible for ensuring they receive, read and adhere to information contained in the materials.

E. Qualifications of home health care agencies that provide private duty nursing and respite services through the waiver:

(1) Services may be provided by eligible agencies.

(2) Agencies may be licensed by the department of health (DOH) as a home health agency pursuant to state law.

(3) Providers must:

(a) comply with all applicable federal, and state waiver regulations and service standards regarding services;

(b) provide supervision to each respite staff at least quarterly, depending on the amount of respite used; supervision must include an on-site observation of the services provided and a face-to-face interview of the individual being served; and

(c) comply with the Department of Health Act, NMSA 1978, Section 9-7-1, et seq. and the Employee Abuse Registry Act, NMSA 1978, Sections 27-7A-1, et seq.

(4) Providers must have available and maintain a roster of trained and qualified employees for back-up of regular scheduling and emergencies.

(5) Providers must ensure that each staff meets the following requirements:

(a) completes a services training program that may include, but is not limited to, agency in-service training or continuing education classes; all training must be documented as required in ALTSD/EDSD CCW service standards; and the following:

(i) new staff must complete 10 hours of training prior to providing services;

(ii) following the first year of service provision, staff must complete a minimum of 10 hours of training annually;

(iii) new staff must complete a written competency test that demonstrates the skill and knowledge required to provide services with a minimum passing score of 85 percent or better, prior to or within 30 days of providing services; and

(iv) staff assigned to new clients must receive instructions specific to the individual recipient prior to providing services to the recipient;

(b) possesses a minimum of one year experience as an aide in a hospital, nursing facility (NF) or rehabilitation center; or two years experience in managing a home or family;

(c) successfully passed nationwide criminal history screening pursuant to 7.1.9 NMAC and in accordance with the Caregivers Criminal History Screening Act, NMSA 1978, Section 29-17-1, et seq.; documentation that the screen has been successfully passed must be maintained in the employee's personnel file;

(d) a current tuberculin (TB) skin test or a chest x-ray upon initial employment by the provider as defined by the DOH; a copy of these results must be maintained in the employees personnel file;

(e) a current cardiopulmonary resuscitation (CPR)/heart saver certification; a copy of this certification must be maintained in the employee's personnel file;

(f) a current first aid certification; a copy of this certification must be maintained in the employee's personnel file;

(g) a valid state driver's license and a motor vehicle insurance policy if the waiver recipient is to be transported by staff; copies of the driver's license and motor vehicle insurance policy must be maintained in the employee's personnel file; and

(h) other qualifications set forth in the CCW service standards.

F. **Qualifications of skilled maintenance therapy provider agencies:** Skilled maintenance therapy includes PT for adults, OT for adults, and speech and language therapy (SLT) for adults.

(1) Skilled maintenance therapy services may be provided by eligible skilled maintenance therapy agencies or independent therapists.

(2) Physical, occupational and speech and language therapists, and PTAs must possess a therapy license in their respective field from the New Mexico regulation and licensing department. COTAs must possess an occupational therapy assistant certification from the New Mexico regulation and licensing department. Speech clinical fellows must possess a clinical fellow license from the New Mexico regulation and licensing department.

(3) Skilled maintenance therapy providers must:

(a) comply with all applicable federal and state waiver regulations and service standards regarding therapy services;

(b) ensure that all PTAs, COTAs and speech clinical fellows are evaluated by a licensed therapist supervisor licensed in the same field at least monthly in the setting where therapy services are provided; bi-monthly supervision must be provided;

(c) ensure all therapy services are provided under the order of the waiver recipient's primary care provider; the therapy provider will obtain the order; the original of this order must be maintained by the therapy provider in the recipient's therapy file and the therapy provider must give a copy of the order to the service coordinator; and

(d) meet all other qualifications set forth in the CCW service standards.

G. **Qualifications for assisted living facilities:**

(1) Assisted living services may be provided by an eligible assisted living facility.

(2) Assisted living service provider agencies must be licensed as an assisted living facility.

(3) Assisted living facilities must:

(a) meet all the requirements and regulations, and be licensed by DOH as an adult residential care facility pursuant to 7.8.2 NMAC;

(b) provide a home-like environment; and

(c) comply with the provisions of Title II and III of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. Section 12101, et seq.).

(4) Assisted living facilities must:

(a) comply with all applicable federal, state and waiver regulations and service standards regarding services;

(b) ensure that individuals providing direct services meet all requirements for service provision;

(c) ensure that individuals providing private duty nursing and skilled therapy services meet all requirements for these services if provided; and

(d) meet all other qualifications set forth in the CCW service standards.

H. **Qualifications of adult day health provider agencies:**

(1) Adult day health services may be provided by eligible adult day health agencies.

(2) Adult day health facilities must be licensed by DOH as an adult day care facility.

(3) Adult day health facilities must meet all requirements and regulations set forth by DOH as an adult day care facility.

(4) Adult day health care provider agencies must comply with the provisions of Title II and III of the Americans with Disabilities Act of 1990, (42 U.S.C. Section 12101, et seq.).

(5) Adult day health care provider agencies must comply with all applicable city, county or state regulations governing transportation services.

(6) Adult day health care provider agencies must meet all other qualifications set forth in the CCW service standards.

I. **Qualifications for environmental modifications providers:**

(1) Environmental modification services may be provided by eligible environmental modification agencies.

(2) Environmental modification providers must have valid New Mexico regulation and licensing department, construction industries division, GB-2 class construction license pursuant to the Construction Industries Licensing Act NMSA 1978, Section 60-13-1 et seq.

(3) Environmental modification providers must:

(a) comply with all New Mexico state laws, rules, and regulations, including applicable building codes, and the laws and regulations of the Americans with Disability Act Accessibility Guidelines (ADAAG), the Uniform Federal Accessibility Standards (UFAS), and the New Mexico state building code;

(b) provide at minimum a one-year warranty on all parts and labor; and

(c) meet all other qualifications set forth in the CCW service standards.

J. **Qualifications for emergency response providers:**

(1) Emergency response services may be provided by eligible emergency response agencies.

(2) Emergency response providers must comply with all laws, rules and regulations of the New Mexico state public corporation commission for telecommunications and security systems, if applicable.

(3) Emergency response providers must meet all other qualifications set forth in the CCW service standards.

[8.307.18.10 NMAC - N, 12-15-10]

8.307.18.11 PROVIDER RESPONSIBILITIES:

A. Providers who furnish services to medicaid recipients must comply with all medicaid provider participation requirements as outlined in 8.302.1 NMAC, *General Provider Policies*.

B. Verify every month that each recipient is eligible for full medicaid coverage and CCW services prior to providing services pursuant to Subsection A of 8.302.1.11 NMAC, *General Provider Policies*; providers must document the date and method of eligibility verification (i.e. HSD/medicaid contracted agency's automated voice response system (AVRS), or eligibility help desk); possession of a medicaid card does not guarantee a consumer's financial eligibility because the card itself does not include financial eligibility, dates or other limitations on the individual's financial eligibility; agencies that provide CCW services to individuals who are not medicaid or CCW eligible cannot bill medicaid for the services provided to the individual.

C. Maintain records that are sufficient to fully disclose the extent and nature of the services provided to the individual as outlined in 8.302.1 NMAC, *General Provider Policies*.

D. Comply with random and targeted audits conducted by the department or its designee that ensure providers are billing appropriately for services provided; the department or its designee will seek recoupment of funds from providers when audits show inappropriate billing for services.

E. Comply with DOH incident reporting and investigation requirements for providers of community based services pursuant to 7.1.13 NMAC.

F. Maintain a continuous quality management program with annual reports of the program implementation and outcomes. Reports must be submitted to ALTSD pursuant to CCW regulations herein.

[8.307.18.11 NMAC - N, 12-15-10]

8.307.18.12 ELIGIBLE RECIPIENTS:

A. The program is limited to the number of federally authorized unduplicated recipient (UDR) positions and program funding.

B. CCW services are limited to individuals who have received an allocation for CCW services and who meet institutional LOC criteria and institutional financial criteria as determined by HSD. Pursuant to 8.290.400.10 NMAC, *basis for defining the group*.

C. In addition to meeting institutional criteria specified above, individuals must meet the following requirements to be eligible for CCW services:

(1) persons who are elderly (age 65 or older), or persons aged birth to 64 with a disability (blind or disabled) as determined by the disability determination unit utilizing social security disability guidelines, who reside in the community; or

(2) persons who are elderly (age 65 or older), or persons aged birth to 64 with a disability (blind or disabled as determined by the disability determination unit utilizing social security disability guidelines), who are institutionalized and want to return to community living or are at risk of institutionalization.

[8.307.18.12 NMAC - N, 12-15-10]

8.307.18.13 COVERED WAIVER SERVICES: All CCW providers must comply with all applicable federal and state waiver regulations and service standards regarding the provision of covered waiver services. The CCW covers the following services for a specified and limited number of waiver recipients as a cost effective alternative to institutionalization in a NF.

A. Service coordination operates independently within the CoLTS MCO using recognized professional standards adopted by the CoLTS MCO and approved by the state, based on the service coordinator's independent judgment to support the needs of the member and is structurally linked to the other CoLTS MCO systems, such as quality assurance, member services and grievances. Clinical and other decisions shall be based on medical necessity and not on fiscal considerations. The CoLTS MCO's service coordinator, who has experience in working with the elderly, individuals with disabilities, and others in need of long-term services, is responsible for ensuring that all applicable policies and procedures involving service plan development are followed. Service coordinators can be RNs, LPNs, social workers, or individuals with at least a bachelor's degree in counseling, special education or a closely related field. Service coordination activities include **s**pecialized service management that is performed by a service coordinator, in collaboration with the member or the member's family or representatives as appropriate, which is person-centered, and includes, but is not limited to:

(1) identification of the member's needs, including physical health services, mental health services, social services, and long-term support services; and development of the member's ISP or treatment plan to address those needs;

(2) assistance to ensure timely and coordinated access to an array of providers and services;

(3) attention to addressing unique needs of members; and

(4) coordination with other services delivered in addition to those noted in the ISP, as necessary and appropriate.

B. **Private duty nursing services for adults:** Private duty nursing services include activities, procedures, and treatment for a physical condition, physical illness or chronic disability.

(1) Services include the following:

(a) medication management, administration and teaching;

(b) aspiration precautions;

(c) feeding tube management;

(d) gastrostomy and jejunostomy;

(e) skin care and wound care;

(f) weight management;

(g) urinary catheter management and bowel and bladder care;

(h) health education;

(i) health screening;

(j) infection control and environmental management for safety;

(k) nutrition management;

(l) oxygen management;

(m) seizure management and precautions;

(n) anxiety reduction;

(o) staff supervision; and

(p) behavior and self-care assistance.

(2) Private duty nursing services must be provided under the order and direction of the recipient's primary care provider, in accordance with the New Mexico Nursing Practice Act NMSA 1978, Section 61-3-1 et seq. and in conjunction with the interdisciplinary team and the service coordinator.

(3) Private duty nursing services

must be provided in accordance with all applicable federal and state program regulations and ALTSD/EDSD CCW service standards. Children receive this service through the medicaid early periodic screening, diagnosis and treatment (EPSDT) program.

C. **Respite services:** Respite services are provided to participants unable to care for themselves and are furnished on a short-term basis because of the absence or need for relief of the unpaid primary caregiver normally providing the care.

(1) Respite services may consist of non-nursing services or private duty nursing services, based on the recipient's needs.

(2) Respite services may be provided in a participant's home, the respite provider's home, or the community.

(3) Services include assistance with routine activities of daily living (e.g., bathing, toileting, preparing or assisting with meal preparation and eating), enhancing self-help skills, and providing opportunities for leisure, play and other recreational activities, and allowing community integration opportunities.

(4) Respite services are limited to a maximum of 100 hours annually per ISP year.

D. **Skilled therapy services for adults:** Skilled maintenance therapy services for adults include PT, OT amd SLT services. Children receive this service through the medicaid EPSDT program.

(1) PT promotes gross or fine motor skills, facilitates independent functioning or prevents progressive disabilities.

(a) Specific services may include:

(i) professional assessment(s), evaluations and monitoring for therapeutic purposes;

(ii) PT treatment interventions;

(iii) training regarding PT activities;

(iv) use of equipment and technologies or any other aspect of the individual's PT services;

(v) designing, modifying or monitoring use of related environmental modifications;

(vi) designing, modifying and monitoring use of related activities supportive to the ISP goals and objectives; and

(vii) consulting or collaborating with other service providers or family members, as directed by the participant.

(b) PT services must be provided in accordance with all applicable federal and state waiver program regulations and ALTSD/EDSD CCW service standards.

(2) OT promotes fine motor skills, coordination, sensory integration, facilitates the use of adaptive equipment or other assistive technology, facilitates independent functioning, and prevents progressive disabilities.

(a) Specific services may include:

(i) teaching daily living skills;

(ii) developing perceptual motor skills and sensory integrative functioning;

(iii) designing, fabricating or modifying assistive technology or adaptive devices;

(iv) providing assistive technology services;

(v) designing, fabricating or applying selected orthotic or prosthetic devices or selecting adaptive equipment;

(vi) using specifically designed crafts and exercise to enhance function;

(vii) training regarding OT activities; and

(viii) consulting or collaborating with other service providers or family members, as directed by the participant.

(b) OT services must be provided in accordance with all applicable federal, state and waiver program regulations, policies and procedures, and ALTSD/EDSD CCW service standards.

(3) SLT preserves abilities for independent function in communication, facilitates oral motor and swallowing function, facilitates use of assistive technology, and prevents progressive disabilities.

(a) Specific services may include:

(i) identifying communicative or oropharyngeal disorders and delays in the development of communication skills;

(ii) preventing communicative or oropharyngeal disorders and delays in the development of communication skills;

(iii) developing eating or swallowing plans and monitoring their effectiveness;

(iv) using specifically designed equipment, tools, and exercises to enhance function;

(v) designing, fabricating or modifying assistive technology or adaptive devices;

(vi) providing assistive technology services;

(vii) adapting the participant's environment to meet his needs;

(viii) training regarding SLT activities; and

(ix) consulting or collaborating with other service providers or family members, as directed by the participant.

(b) SLT services must be provided in accordance with all applicable federal and state waiver program regulations and ALTSD/EDSD CCW service standards.

E. **Assisted living services:** Assisted living is a residential service that includes assistance with activities of daily living (ADL) services, companion services, medication management (to the extent required under state law; medication oversight as required by state law), 24-hour on-site response capability to meet scheduled or unpredictable participant needs, and to provide supervision, safety and security. Services also include social and recreational programming.

(1) Coverage does not include 24-hour skilled care or supervision.

(2) Rates for room and board are excluded from the cost of services and are either billed separately by the provider or an itemized statement is developed that separates the costs of waiver services from the costs of room and board.

(3) Nursing and skilled therapy services are incidental, rather than integral to the provision of assisted living services. Nursing and skilled therapy services may be provided by third parties and must be coordinated with the assisted living facility.

(4) Assisted living facilities must enter into an agreement with the recipient that details all aspects of care to be provided including identified risk factors. The original agreement must be maintained in the recipient's file and a copy must be provided by the assisted living facility to the service coordinator.

(5) Assisted living services must be provided by an assisted living facility that has been licensed and certified by DOH as an adult residential care facilities, pursuant to 7.8.2 NMAC and all other applicable federal and state waiver program regulations and ALTSD/EDSD CCW service standards.

F. **Adult day health services:** Adult day health services offer health and social services to assist participants to achieve optimal functioning and activates, motivates and rehabilitates the participant in all aspects of their physical and emotional well-being, based on the recipient's individual needs.

(1) Services include:

(a) a variety of activities for recipients that promote personal growth and enhance the recipient's self-esteem by providing opportunities to learn new skills and adaptive behaviors, improve capacity for independent functioning, or provide for group interaction in social and instructional programs and therapeutic activities; all activities must be supervised by program staff;

(b) supervision of self-administered medication as determined

by the New Mexico Nursing Practice Act NMSA 1978, Section 61-3-1, et seq.;

(c) involvement in the greater community;

(d) transportation to and from the adult day health program; and

(e) meals that do not constitute a "full nutritional regime" of three meals per day.

(2) Services are generally provided for two or more hours per day on a regularly scheduled basis, for one or more days per week, by a licensed adult day-care, community-based facility.

(3) The provider must assure safe and health conditions for activities inside or outside the facility.

(4) Adult day health services include nursing services and skilled maintenance therapies (physical, occupational and speech) that must be provided in a private setting at the facility. The nursing and skilled maintenance therapies do not have to be directly provided by the facility. If directly provided, the facility must meet all program requirements for the provision of these services.

(5) Adult day health services must be provided as set forth by DOH as an adult day health facility, pursuant to 7.13.2 NMAC and all other applicable federal and state waiver program regulations and ALTSD/EDSD CCW service standards.

G. **Environmental modification services:** Environmental modifications services include the purchase and installation of equipment and making physical adaptations to an individual's residence that are necessary to ensure the health, welfare and safety of the individual or enhance the individual's level of independence.

(1) Adaptations include the following:

(a) installation of ramps and grab-bars;

(b) widening of doorways or hallways;

(c) installation of specialized electric and plumbing systems to accommodate medical equipment and supplies;

(d) purchase and installation of lifts or elevators;

(e) modification of bathroom facilities (roll-in showers, sink, bathtub, and toilet modifications, water faucet controls, floor urinals and bidet adaptations and plumbing);

(f) turnaround space adaptations;

(g) specialized accessibility, safety adaptations and additions;

(h) installation of trapeze and mobility tracks for home ceilings;

(i) purchase and installation of automatic door openers or doorbells, voice-activated, light-activated, motion-activated and electronic devices;

(j) fire safety adaptations;

(k) purchase and installation of modified switches, outlets or environmental controls for home devices;

(l) purchase and installation of alarm and alert systems or signaling devices;

(m) air filtering devices;

(n) heating/cooling adaptations; and

(o) glass substitute for windows and doors.

(2) Service coordinators must consider alternative methods of meeting the individual's needs prior to listing environmental modifications on the ISP.

(3) Environmental modifications have a limit of $5,000 every five years.

(4) The environmental modification provider must ensure proper design criteria is addressed in planning and design of the adaptation, provide or secure licensed contractor(s) or approved vendor(s) to provide construction or remodeling services, provide administrative and technical oversight of construction projects, provide consultation to family members, waiver providers and contractors concerning environmental modification projects to the individual's residence, and inspect the final environmental modification project to ensure that the adaptations meet the approved plan submitted for environmental adaptation.

(5) The environmental modification provider must submit the following information as required by ALTSD/EDSD CCW service standards:

(a) an environmental modification evaluation;

(b) a service cost estimate including equipment, materials, supplies, labor, travel, per diem;

(c) a letter of acceptance of service cost estimate signed by the recipient;

(d) a letter of permission from owner of property;

(e) a construction letter of understanding;

(f) photographs of the proposed modification; and

(g) documentation demonstrating compliance with the American with Disabilities Act Accessibility Guidelines (ADAAG), the uniform federal accessibility standards (UFAS), and the New Mexico state building code.

(6) After the completion of work, the environmental modification provider must submit the following to the MCO:

(a) a letter of approval of work completed, signed by the recipient; and

(b) photographs of the completed modifications.

(7) Environmental modification services must be managed by professional staff available to provide technical assistance and oversight for environmental modification projects.

(8) Environmental modification services shall be provided in accordance with all applicable federal and state waiver program regulations including applicable federal, state and local building codes, and ALTSD/EDSD CCW service standards.

H. **Emergency response services:** Emergency response services provide an electronic device that enables a participant to secure help in an emergency. The participant may also wear a portable "help" button to allow for mobility. The system is connected to the participant's phone and programmed to signal a response center when a "help" button is activated. The response center reacts to the signal to ensure the recipient's health and safety.

(1) Emergency response services include:

(a) testing and maintaining equipment;

(b) training participants, caregivers and first responders on use of the equipment;

(c) 24 hour monitoring for alarms;

(d) checking systems monthly or more frequently, if warranted by electrical outages, severe weather, etc.; and

(e) reporting participant emergencies and changes in the participant's condition that may affect service delivery.

(2) The response center must be staffed by trained professionals.

(3) Emergency response service categories consist of emergency response and emergency response high need.

(4) Emergency response providers shall provide the recipient with information regarding services rendered, limits of services and information regarding agency service contracts.

(5) Emergency response providers must report recipient emergencies and changes in the recipient's condition that may affect service delivery to the MCO within 24 hours.

(6) Emergency response providers must complete quarterly reports for each recipient served. The original report must be maintained in the recipient's file and a copy must be submitted by the emergency response provider to the MCO.

(7) Emergency response services shall be provided in accordance with all applicable federal and state waiver program regulations and ALTSD/EDSD CCW service standards.

I. **Service coordination:** Service coordination operates independently within the CoLTS MCO using recognized professional standards adopted by the CoLTS MCO and approved by the state, based on the service coordinator's independent judgment to support the needs of the member and is structurally linked to the other CoLTS MCO systems, such as quality assurance, member services and

grievances. Clinical and other decisions shall be based on medical necessity and not on fiscal considerations. The CoLTS MCO's service coordinator, who has experience in working with the elderly, individuals with disabilities, and others in need of long-term services, is responsible for ensuring that all applicable policies and procedures involving service plan development are followed. Service coordinators can be RNs, LPNs, social workers, or individuals with at least a bachelor's degree in counseling, special education or a closely related field. Service coordination activities include **s**pecialized service management that is performed by a service coordinator, in collaboration with the member or the member's family or representatives as appropriate, which is person-centered, and includes, but is not limited to:

(1) identification of the member's needs, including physical health services, mental health services, social services, and long-term support services; and development of the member's ISP or treatment plan to address those needs;

(2) assistance to ensure timely and coordinated access to an array of providers and services;

(3) attention to addressing unique needs of members; and

(4) coordination with other services delivered in addition to those noted in the ISP, as necessary and appropriate.

J. **Community transition goods and services:**

(1) Community transition goods and services are non-recurring set-up expenses for individuals who are transitioning from an institutional or another provider-operated living arrangement (excluding assisted living facilities) to a living arrangement in a private residence where the person is directly responsible for his or her own living expenses. Allowable expenses are those necessary to enable a person to establish a basic household that do not constitute room and board and may include:

(a) security deposits that are required to obtain a lease on an apartment or home;

(b) essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bed/bath linens;

(c) set-up fees or deposits for utility or service access, including telephone, electricity, heating and water;

(d) services necessary for the individual's health and safety such as pest eradication and one-time cleaning prior to occupancy;

(e) moving expenses;

(f) necessary home environmental modifications provided no more than 180 days prior to transition;

(g) specialized medical equipment and supplies not otherwise covered by medicaid and purchased within 60 days of the scheduled transition;

(h) assistive technology and durable medical equipment not otherwise covered by medicaid purchased within 60 days of the scheduled transition;

(i) nutrition support services such as short-term nutritional counseling and education in food preparation skills;

(j) non-medical transportation;

(k) non-medical transportation supports such as vehicle modification;

(l) family services to support or educate the informal support network; and

(m) the purchase and related costs of service animals up to service limits.

(2) Community transition goods and services are furnished only to the extent that the goods or services:

(a) are reasonable and necessary as determined through the service plan development process;

(b) are clearly identified in the service plan;

(c) cannot be obtained from other sources;

(d) are not prohibited by federal and state statutes and regulations;

(e) are not experimental in nature; and

(f) the person has no other access to these services.

(3) Community transition goods and services do not include monthly rental or mortgage expense, food, regular utility charges, or household appliances or items that are intended for purely diversion/recreation purposes.

(4) Community transition goods and services are limited to $3,500.00 per person every five years. In order to be eligible for this service, the person must have a NF stay at least 30 days prior to transition to the community.

K. C**ommunity relocation specialist services:** The CoLTs MCOs are responsible for designation and oversight of the community transition relocation specialist. Community transition relocation specialist services are specialized services, provided while the person is in the NF and during the first 60 days of transition to the community, to assess the person's needs, complete a service plan, assist the person to arrange for and procure needed resources for the move from the nursing facility to the community, and monitor transition service delivery, provided the service is provided no more than 60 days for waiver participant's who have been institutionalized for more than six months, or 14 days for those who have been in the institution for less than six months.

(1) The relocation specialist educates the consumer/participant about home and community-based service options, the transition process, and other relevant issues. The relocation specialist works with the consumer/participant, the consumer/participant's support network when applicable and the consumer/participant's CoLTS MCO service coordinator to develop a person-centered, community-based transition plan as part of the consumer/participant's individual service plan (ISP) that includes a detailed transition plan and budget.

(2) The relocation specialist works with each allocated consumer/participant while in the NF to ensure that services, goods, and supports needed prior to the individual moving to the community are in place, and ensures that consumer/participants have the opportunity to educate their caregivers. The CoLTS MCO service coordinator is the single provider responsible for developing a comprehensive service plan for the individual when they are living in the community, its implementation and conducting service monitoring activities.

(3) Services are limited to 10 hours (or $500) per transition per person. In order to be eligible for this service, the person must have a nursing facility stay of at least 30 days prior to transition to the community. Services are also limited to no more than 180 days prior to transition to the community and no more than 60 days following transition to the community.

[8.307.18.13 NMAC - N, 12-15-10]

8.307.18.14 NON-COVERED SERVICES: Only the services listed as covered waiver services in these regulations are provided under the CCW program. CCW eligible recipients qualify for full state plan medicaid benefits. Additional services may be accessed through medicaid state plan services. See 8.301.3 NMAC, *General Noncovered Services* for an overview of non-covered services. Medicaid does not cover room and board as waiver service or ancillary services.

[8.307.18.14 NMAC - N, 12-15-10]

8.307.18.15 INDIVIDUALIZED SERVICE PLAN (ISP): An ISP must be developed by an interdisciplinary team of professionals in collaboration with the recipient and others involved in the recipient's care. The ISP must be in accordance with the CCW service standards.

A. The interdisciplinary team must review the ISP at least every six months or more often if indicated.

B. The individualized services plan must contain the following information:

(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;

(3) statement of the least restrictive conditions necessary to achieve the purposes of treatment;

(4) description of intermediate and long-range goals, with a projected timetable for their attainment and the duration and scope of services;

(5) statement and rationale of the ISP for achieving these intermediate and long-range goals, including provision for review and modification of the plan; and

(6) specification of responsibilities for areas of care, description of needs, and orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the recipient.

[8.307.18.15 NMAC - N, 12-15-10]

8.307.18.16 PRIOR AUTHORIZATION AND UTILIZATION REVIEW: All medicaid services are subject to utilization review for medical necessity and program compliance. Reviews by medicaid or its designee may be performed before services are furnished, after services are furnished, before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, CCW providers receive instructions and documentation forms necessary for prior approval and claims processing.

A. **Prior authorization:** To be eligible for CCW services, recipients must meet the LOC requirements for services provided in a NF. LOC determinations are made by medicaid or its designee. The ISP must specify the type, amount and duration of services. All services specified in the ISP require prior authorization from medicaid or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. **Eligibility determination:** Prior authorization of services does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are eligible for medicaid and CCW services or other health insurance prior to the time services are furnished. Recipients may not be institutionalized, or hospitalized, or receive other HCBS waiver services at the time CCW services are provided with the exception of transition goods and services and relocation specialist services. See 8.290.400.10 NMAC, *basis for defining the group*.

C. **Reconsideration:** Providers who disagree with the denial of a prior authorization request or other review decisions may request a re-review and reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [8 NMAC 4.MAD.953].

[8.307.18.16 NMAC - N, 12-15-10]

8.307.18.17 REIMBURSEMENT: Once enrolled, agencies receive instructions on documentation, billing, and claims processing. Claims must be filed per the billing instructions in the medicaid policy manual for FFS or by the CoLTS MCO in managed care. Providers must follow all medicaid billing instructions. FFS reimbursement to providers of waiver services is made at a predetermined reimbursement rate. See 8.302.2 NMAC, *Billing For Medicaid Services.*

[8.307.18.17 NMAC - N, 12-15-10]

HISTORY OF 8.307.18 NMAC:

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

ISD-Rule 310.2000, Coordinated Community In-Home Care Services, 3/19/84.

History of Repealed Material:

ISD-Rule 310.2000, Coordinated Community In-Home Care Services, Repealed 1/18/95.

8 NMAC 4.MAD.733, Disabled and Elderly Home and Community-Based Services Waiver, filed 1/10/97 - Repealed effective 8/1/2006.

8.314.2 NMAC, Disabled and Elderly Home and Community-Based Services Waiver, filed 7/18/2006 - Repealed effective 12/15/2010.

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

Explanatory Paragraph. This is an amendment to 8.307.7 NMAC, Section 11 which will be effective December 15, 2010. The Medical Assistance Division amended the introductory paragraph of this section to include CoLTS 1915 (c) waiver coverage. The CoLTS 1915 (c) waiver is fully described in the new 8.307.18 NMAC which will also be effective December 15, 2010.

8.307.7.11 SERVICES INCLUDED IN THE COORDINATION OF LONG-TERM SERVICES PROGRAM BENEFIT PACKAGE: The CoLTS MCO must provide a comprehensive, coordinated and fully integrated system of health care, long-term services, and social and community services to its members. The following are state plan services provided under the authority of the 1915(b) waiver and are available to all CoLTS members. The CoLTS 1915 (c) waiver provides home and community-based services to eligible recipients who are disabled or elderly, as an alternative to institutionalization. 8.307.18 NMAC describes CoLTS 1915 (c) waiver eligible recipients, eligible providers, covered waiver services, non-covered services, utilization review and provider reimbursement.

[8.307.7.11 NMAC - N, 8-1-08; A, 9-1-09; A, 5-1-10; A, 12-15-10]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Repeal

1.18.601 NMAC, Executive Records Retention and Disposition Schedule for the Commission of the Status of Women, is being repealed and replaced with the new 1.18.601 NMAC, Executive Records Retention and Disposition Schedule for the Commission of the Status of Women, effective December 20, 2010. The New Mexico Commission of Public Records at their November 16, 2010 meeting repealed the current rule and approved the new rule.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

November 18, 2010

Leo R. Lucero, Agency Analysis Bureau Chief
NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the

following rules:
* 1.18.601 NMAC ERRDS, Commission of the Status of Women,
* 1.18.647 NMAC ERRDS, Developmental Disabilities Planning Council; and
* 1.18.665 NMAC ERRDS, Department of Health.

A review of the rules shows that their impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo
State Records Administrator

SJ/lrl

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS
1.18.601 NMAC ERRDS, Commission on the Status of Women

1. Subject matter: 1.18.601 NMAC, Executive Records Retention and Disposition Schedule for the Commission on the Status of Women. This rule is new and replaces 1.18.601 NMAC ERRDS, Commission on the Status of Women, an outdated version that was filed on 06/24/2005. This records retention and disposition schedule is a timetable for the management of specific records series created by the Commission on the Status of Women. It describes each record series by record name, record function, record filing maintenance system, record content, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the Commission on the Status of Women as well as its final disposition. The retention and disposition requirements in this rule are based on the legal use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Commission on the Status of Women.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Commission on the Status of Women. Persons and entities normally subject to the rules and regulations of the Commission on the Status of Women may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Commission on the Status of Women

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Commission on the Status of Women entity outside the covered geographical area that conducts business with or through the Commission on the Status of Women may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: 12/20/2010.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.601 NMAC ERRDS, Commission on the Status of Women.

_____
Tania Maestas Date
Assistant Attorney General

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS
1.18.647 NMAC ERRDS, Developmental Disabilities Planning Council

1. Subject matter: 1.18.647 NMAC, Executive Records Retention and Disposition Schedule for the Developmental Disabilities Planning Council. This is a new schedule developed upon request by Developmental Disabilities Planning Council to address public records created by the Council. This records retention and disposition schedule is a timetable for the management of specific records series of the Developmental Disabilities Planning Council. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Developmental Disabilities Planning Council.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Developmental Disabilities Planning Council. Persons and entities normally subject to the rules and regulations of the Developmental Disabilities Planning Council may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Developmental Disabilities Planning Council.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Developmental Disabilities Planning Council. Any person or entity outside the covered geographical area that conducts business with or through the Developmental Disabilities Planning Council may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7902.

7. Effective date of this rule: December 20, 2010.

Certification

As counsel for the State Commission of Public Records, I certify that this synopsis provides adequate notice of the content of 1.18.647 NMAC ERRDS, Developmental Disabilities Planning Council.

_____

Tania Maestas Date
Assistant Attorney General

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.15.4 NMAC, Sections 7-10 and 312 effective December 20, 2010.

1.15.4.7 DEFINITIONS:

A. [~~Administrator:~~]"Administrator" means the state records administrator. (Section 14-3-2, NMSA 1978)

B. [~~Agency:~~] "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico. (Section 14-3-2, NMSA 1978)

C. [~~Audit:~~] "Audit" means a periodic examination of an organization to determine whether appropriate procedures and practices are followed.

D. [~~Commission:~~] "Commission" means the state commission of public records. (Section 14-3-2, NMSA 1978)

E. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.

[~~E.~~] F. [~~Pending litigation:~~] "Pending litigation" means a proceeding in a court of law whose activity is in progress but not yet completed.

[~~F.~~] G. "Record destruction[~~:~~]" means the process of totally obliterating information on records by any method to make the information unreadable or unusable under any circumstances.

[~~G.~~] H. "Records management[:]" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

[~~H.~~] I. "Records retention period[~~:~~]" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

[~~I.~~] J. "Records retention schedule[~~:~~]" means a document prepared as part of a records retention program that lists the period of time for retaining records.

[~~J.~~] K. [~~Public records:~~]"Public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. (Section 14-4-2, NMSA 1978)

[~~K.~~] **L. [~~Non-records:~~** ~~Library or museum material of the state library, state institutions and state museums, extra copies of documents reserved only for convenience of reference and stocks of publications and processed documents are non-records. (Section 14-3-2 C, NMSA 1978). The following specific types of materials are non-records: extra copies of correspondence; documents preserved only for convenience of reference; blank forms/ books which are outdated; materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer/ agency; preliminary and non-final drafts of letters, reports and memoranda which may contain or reflect the working or deliberative process by which a final decision or position of the agency, board, department or subdivision thereof is reached: shorthand notes, steno tapes, mechanical recordings which have been transcribed, except where noted on agency retention schedules; routing and other interdepartmental forms which are not significant evidence of the activity concerned and do not otherwise have value as described above; stocks of publications already sent to archives and processed documents preserved for supply purposes only; form and guide letters, sample letters, form paragraphs; subject files, including copies of correspondence, memoranda, publications, reports and other information received by agency and filed by subject (also referred to as reading files or information files).~~] **"Non-records"** means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity, and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts; blank forms, transmittal letters or forms that do not add information; sample letters; and reading file or informational files.

[5/19/97; 8/8/96; 1.15.4.7 NMAC - Rn, 1 NMAC 3.2.90.7, 10/01/2000; A, 12/20/2010]

1.15.4.8 INSTRUCTIONS:

A. Records retention and disposition schedules identify the types of records maintained by state agencies and specify a period of time which records must be retained. A retention period may be stated in terms of months or years and is sometimes expressed as contingent upon the occurrence of an event. There are two types of records retention and disposition schedules created by the state records center and archives. General schedules that list records common to all agencies and executive schedules which are specific to an agency. Each record series will be represented in the format listed below.

(1) Program - describes the function of the records

(2) Maintenance system - describes how an agency files (organizes) records

(3) Description - describes the purpose and content of a record

(4) Retention - defines the length of time records must be kept before they are eligible for destruction or archival preservation.

[~~A.~~] B. For records of an administrative nature, refer to the Records Retention and Disposition Schedule for General Administrative Records, 1.15.2 NMAC.

[~~B.~~] **C.** For records of a financial nature, refer to the Records Retention and Disposition Schedule for General Financial Records, 1.15.4 NMAC.

[~~C.~~] **D.** For records of a personnel nature, refer to the Records Retention and Disposition Schedule for General Personnel Records, 1.15.6 NMAC.

[~~D.~~] **E.** For records of a medical nature, refer to the Records Retention and Disposition Schedule for General Medical Records, 1.15.8 NMAC.

[~~E.~~] **F.** Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

[~~F.~~] **G.** The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

[~~G.~~] **H.** [~~Confidentiality is~~

~~denoted as "-C-". Not all materials in a file may be confidential. Refer to NOTE. Where portions of file may be confidential, refer to legal counsel for agency.~~]Confidentiality is denoted for each file but all materials in a file may be confidential. Refer to note. Where portions of file may be confidential, refer to legal counsel for agency.

[**~~H.~~] I.** Access to confidential documents [~~and/or~~] or confidential files shall be only by authorization of agency or attorney general [~~and/or~~] or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

[~~I.~~] J. All records, papers or documents may be photographed, microfilmed, [~~microphotographed~~] digitized, scanned or reproduced on film in accordance with standards promulgated by the state records administrator. All imaging, microfilm or computer output microfilm systems shall be approved by the state records administrator prior to the destruction of source documents (Section 14-3-15 NMSA 1978). Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. (Section 14-1-5, 14-1-6 NMSA 1978)

[~~J.~~] K. Data processing and other machine readable records. Many paper records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media. In these cases, the information on the data processing medium should be retained for the length of time specified in records retention & disposition schedules for paper records and should be subject to the same confidentiality and access restrictions as paper records. When the destruction of a record is required, all versions of said record shall be electronically over-written on machine readable media on which it is stored (or media destroyed). (See also 1.13.7 NMAC: PERFORMANCE GUIDELINES FOR THE LEGAL ACCEPTANCE OF PUBLIC RECORDS PRODUCED BY INFORMATION TECHNOLOGY SYSTEMS).

L. Email messages that contain information sent or received by an agency in connection with the transaction of official state business or in pursuance of law are public records and are subject to retention requirements established in both general and executive records retention and disposition schedules.

[5/19/97; 8/8/96; 1.15.4.8 NMAC - Rn, 1 NMAC 3.2.90.8, 10/01/2000; A, 12/20/2010]

1.15.4.9 ABBREVIATIONS AND ACRONYMS:

A. "FCD" stands for financial control division of the department of finance and administration.

B. "NMSA" stands for New Mexico statutes annotated.

C. "SHARE" stands for statewide human resources, accounting and financial management reporting system.

[1.15.4.9 NMAC - N, 12/20/2010]

1.15.4.10 STATEWIDE ACCOUNTING: The FCD of the New Mexico department of finance and administration is mandated by statute Sections 6-5-1 through 6-5-6, NMSA 1978 to maintain a uniform statewide accounting system. The system implemented by FCD is the SHARE system. The system consists of a number of integrated financial and human resource modules. State statute also requires state agencies to implement internal accounting controls designed to prevent accounting errors and violations of state and federal law and rules related to financial matters. This schedule applies to all state agencies that process financial transactions through SHARE.

[1.15.4.10 NMAC - N, 12/20/2010]

1.15.4.312 PAYMENT VOUCHER FILES:

A. Program: expenditure records

B. Maintenance system: agency preference

C. Description: [~~hardcopy output form used to initiate payment for goods or services. Voucher may contain bar code, vendor code, vendor name and remittance address, agency name, page, date, agency code, document number, expiration date, contract number, warrant number, reference document, line, code, commodity line, invoice number, fund, organization program code, object code, revenue source, balance sheet account, report category, description, amount, total, payee signature, agency authorized signature and date, etc.~~] output records maintained by state agencies of completed transactions authorizing payment for services rendered, purchase of supplies or equipment, travel advance or reimbursement of work-related expenses incurred by a state employee or public officer. Portions of these files may be input to the SHARE system. Files may include supporting documentation such as printed SHARE voucher screenshots, printed SHARE voucher screens, copies of original invoices, copy of purchase documents, white papers, expense reimbursement forms, copy of travel reimbursement forms, copies of receipts, copies of travel advance forms, etc.

D. Retention:

(1) Medicaid or medicare related voucher files: [~~six years after date created per Section 27-11-4 (A) NMSA 1978~~] seven years from the close of the federal fiscal year in which voucher created

(2) [~~all others: three years after close of fiscal year in which created~~] All other voucher files: three years from close of fiscal year in which voucher created

[5/4/67; 7/16/96; Rn, 1 NMAC 3.2.90.20. F312, 7/30/97; 1.15.4.312 NMAC - Rn, 1 NMAC 3.2.90.20.F312, 10/1/2000; A, 4/11/2002; A, 12/20/2010]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.15.5 NMAC, Sections 2, 7, 8 and 310 effective December 20, 2010.

1.15.5.2 SCOPE: [~~general financial records.~~] All New Mexico local governments and educational institutions

[8/8/96; 1.15.5.2 NMAC - Rn, 1 NMAC 3.2.90.2, 10/01/2000; A, 12/20/2010]

1.15.5.7 DEFINITIONS:

A. [~~Administrator:~~] "Administrator" means the state records administrator. (Section 14-3-2, NMSA 1978)

B. [~~Agency:~~]"Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico. (Section 14-3-2, NMSA 1978)

C. [~~Audit:~~]"Audit" means a periodic examination of an organization to determine whether appropriate procedures and practices are followed.

D. [~~Commission:~~] "Commission" means the state commission of public records. (Section 14-3-2, NMSA 1978)

E. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.

[~~E.~~] F. [~~Pending litigation:~~] "Pending litigation" means a proceeding in a court of law whose activity is in progress but not yet completed.

[~~F.~~] G. "Record destruction[~~:~~]" means the process of totally obliterating information on records by any method to make the information unreadable or unusable under any circumstances.

[~~G.~~] H. "Records management[:]" means the systematic control of all records from creation or

receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

[H.] I. "Records retention period[:]" means the period of time during which records must be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

[I.] J. "Records retention schedule[:]" means a document prepared as part of a records retention program that lists the period of time for retaining records.

[J.] K. [P u b l i c records:]"Public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. (Section 14-4-2, NMSA 1978)

[K. Non-records: Library or museum material of the state library, state institutions and state museums, extra copies of documents reserved only for convenience of reference and stocks of publications and processed documents are non-records. (Section 14-3-2 C, NMSA 1978). The following specific types of materials are non-records: extra copies of correspondence; documents preserved only for convenience of reference; blank forms/ books which are outdated; materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer/ agency; preliminary and non-final drafts of letters, reports and memoranda which may contain or reflect the working or deliberative process by which a final decision or position of the agency, board, department or subdivision thereof is reached: shorthand notes, steno tapes, mechanical recordings which have been transcribed, except where noted on agency retention schedules; routing and other interdepartmental forms which are not significant evidence of the activity concerned and do not otherwise have value as described above; stocks of publications already sent to archives and processed documents preserved for supply purposes only; form and guide letters, sample letters, form paragraphs; subject files, including copies of correspondence, memoranda, publications, reports and other information received by agency and filed by subject (also referred to as reading files or information files).]

L. "Non-records" means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity, and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency; extra copies of correspondence; preliminary drafts; blank forms, transmittal letters or forms that do not add information; sample letters; and reading file or informational files.

[5/19/97; 8/8/96; 1.15.5.7 NMAC - Rn, 1 NMAC 3.2.90.7, 10/01/2000; A, 12/20/2010]

1.15.5.8 INSTRUCTIONS:

A. Records retention and disposition schedules identify the types of records maintained by government agencies and specify a period of time which records must be retained. A retention period may be stated in terms of months or years and is sometimes expressed as contingent upon the occurrence of an event. There are two types of records retention and disposition schedules created by the state records center and archives for local governments. General interpretive schedules that list records common to all local government agencies and local government records retention and disposition schedules (LGRRDS) which are specific to local government offices. Each record series will be represented in the format listed below

(1) Program - describes the function of the records

(2) Maintenance system - describes how an agency files (organizes) records

(3) Description - describes the purpose and content of a record

(4) Retention - defines the length of time records must be kept before they are eligible for destruction or archival preservation.

[A.] B. For records of an administrative nature, refer to the Records Retention and Disposition Schedule for General Administrative Records [1.15.2 NMAC] (For Use by Local Governments and Educational Institutions), (Interpretive) 1.15.3 NMAC.

[B.] C. For records of a financial nature, refer to the Records Retention and Disposition Schedule for General Financial Records, [1.15.4 NMAC] (Interpretive) 1.15.5 NMAC.

[C.] D. For records of a personnel nature, refer to the Records Retention and Disposition Schedule for General Personnel Records, [1.15.6 NMAC] (Interpretive) 1.15.7 NMAC.

[D.] E. For records of a medical nature, refer to the Records Retention and Disposition Schedule for General Medical Records, 1.15.8 NMAC.

[E.] F. Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

[F.] G. The descriptions of files are intended to be evocative, not complete. For example, there will always be some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

[G.] H. [Confidentiality is denoted as "-C-". Not all materials in a file may be confidential. Refer to NOTE. Where portions of file may be confidential, refer to legal counsel for agency.] Confidentiality is denoted for each file but all materials in a file may be confidential. Refer to note. Where portions of file may be confidential, refer to legal counsel for agency.

[H.] I. Access to confidential documents [and/or] or confidential files shall be only by authorization of agency or attorney general [and/or] or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

[I.]J. All records, papers or documents may be photographed, microfilmed, [microphotographed] digitized, scanned or reproduced on film in accordance with standards promulgated by the state records administrator. All imaging, microfilm or computer output microfilm systems shall be approved by the state records administrator prior to the destruction of source documents (Section 14-3-15 NMSA 1978). Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. (Section 14-1-5, 14-1-6 NMSA 1978)

[J.] K. Data processing and other machine readable records. Many paper records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media. In these cases, the information on the data processing medium should be retained for the length of time specified in records retention & disposition schedules for paper records and should be subject to the same confidentiality and access restrictions as paper records. When the destruction of a record is required, all versions of said record shall be electronically over-written on machine readable media on which it is stored (or media destroyed). (See also 1.13.7 NMAC: PERFORMANCE GUIDELINES FOR THE LEGAL ACCEPTANCE

OF PUBLIC RECORDS PRODUCED BY INFORMATION TECHNOLOGY SYSTEMS).

L. Email messages that contain information sent or received by an agency in connection with the transaction of official government business or in pursuance of law are public records and are subject to retention requirements established in both general interpretive and local government records retention and disposition schedules.
[5/19/97; 8/8/96; 1.15.5.8 NMAC - Rn, 1 NMAC 3.2.90.8, 10/01/2000; A, 12/20/2010]

1.15.5.310 PAYMENT VOUCHER [~~FILE~~] FILES:

A. Program: expenditure records

B. Maintenance system: organization's preference

C. Description: [~~records concerning the purchase and payment of goods and/or services for agency. File may include requisition for purchase, copy of purchase document, vendor invoices, bill of lading, correspondence, memoranda, voucher authorizing payment, etc.~~] records documenting completed transactions authorizing payment for services rendered, purchase of supplies or equipment, travel advance or reimbursement of work-related expenses incurred by an employee or public officer. Files may include supporting documentation such as copy of vouchers, invoices, purchase documents, expense reimbursement forms, travel reimbursement forms, receipts, travel advance forms, etc.

D. Retention:

[~~**(1) Finance department copy:** six years after close of fiscal year in which created~~

~~**(2) Other department copy:** three years after close of fiscal year in which created~~] six years from close of fiscal year in which voucher created or in which audit is completed
[08/29/94, 01/10/97; Rn, 1 NMAC 3.2.90.21.30.F310, 07/13/98; 1.15.5.310 NMAC - Rn, 1 NMAC 3.2.90.21.F310, 10/1/2000; A, 12/20/2010]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

SYNOPSIS
1.18.665 NMAC ERRDS, Department of Health

1. Subject matter: 1.18.665 NMAC, Executive Records Retention and Disposition Schedule for the Department of Health. This is an amendment to the existing 1.18.665 NMAC ERRDS, Department of Health approved August 24, 2010 modifying Sections 1.18.665.7, 9, 3100-3102, 3107, 3108, 3110, 3113, 3116 and adding Sections 3104-3106, 3111, 3118, 3119 and 3151. This records retention and disposition schedule is a timetable for the management of specific records series of the Department of Health. It describes each record series by record name, record function, record content, record filing system, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal and use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Department of Health.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Department of Health. Persons and entities normally subject to the rules and regulations of the Department of Health may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Department of Health.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Department of Health. Any person or entity outside the covered geographical area that conducts business with or through the Department of Health may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7902.

7. Effective date of this rule: December 20, 2010.

Certification

As counsel for the State Commission of Public Records, I certify that this synopsis provides adequate notice of the content of 1.18.665 NMAC ERRDS, Department of Health.

_____

Tania Maestas Date
Assistant Attorney General

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 10 GAS SERVICES
PART 2 PROPANE CUSTOMER PROTECTION

17.10.2.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
[17.10.2.1 NMAC - N, 12-15-10]

17.10.2.2 SCOPE:

A. This rule applies to propane dealers operating within New Mexico subject to the jurisdiction of the New Mexico public regulation commission.

B. Nothing in this rule shall supersede a federal or New Mexico law, rule, code or regulation designed to protect customer safety or public safety with respect to propane. If there is a conflict with this rule, such law, rule, code or regulation shall take precedence to the extent of that conflict.

C. All proceedings conducted by the commission under this rule shall be governed by the commission's rules of procedure, 1.2.2.2 NMAC through 1.2.2.40 NMAC.
[17.10.2.2 NMAC - N, 12-15-10]

17.10.2.3 STATUTORY AUTHORITY: Sections 8-8-4, 8-8-4.1 and 8-8-15 NMSA 1978.
[17.10.2.3 NMAC - N, 12-15-10]

17.10.2.4 DURATION: Permanent.
[17.10.2.4 NMAC - N, 12-15-10]

17.10.2.5 EFFECTIVE DATE: December 15, 2010; unless a later date is cited at the end of a section.
[17.10.2.5 NMAC - N, 12-15-10]

17.10.2.6 OBJECTIVE: The purpose of this rule is to establish a uniform set of standards defining the rights and responsibilities of propane customers and dealers. The purpose of this rule is also to ensure that dealers provide customers with transparent, accurate and timely information. This rule establishes a process within the commission for the resolution of customers'

complaints.
[17.10.2.6 NMAC - N, 12-15-10]

17.10.2.7 DEFINITIONS: Unless otherwise specified, as used in this rule:

A. "budget billing plan" means an agreement between a customer and a dealer intended to levelize or average the monthly billing for propane and propane services;

B. "customer" means a purchaser of propane who purchases propane from a dealer to heat the interior of a dwelling or structure or to heat water, is legally liable for the payment of those purchases and does not purchase propane for resale;

C. "customer rate variation" means a variation of prices charged by a propane dealer to customers;

D. "dealer" means a retail distributor of propane who delivers propane to customers' premises and fills propane tanks at those premises;

E. "delinquent" means the status of a bill rendered to a customer for propane service which remains unpaid after the due date of the bill;

F. "important Information for New Mexico propane consumers (IINMPC)" means a document in Spanish and English for residential customers created and updated by the commission and posted on its website that shall contain at a minimum:

(1) the toll-free telephone number of the commission's consumer relations division;

(2) information regarding LIHEAP application forms, qualification requirements, application procedures and locations at which residential customers may submit LIHEAP applications;

(3) information regarding New Mexico energy$mart application forms, qualification requirements, application procedures and locations at which residential delivery customers may submit energy$mart applications; and

(4) other information as may be specified by the commission from time to time such as:

(a) tips for new and existing consumers;

(b) a description of propane;

(c) questions consumers may ask dealers;

(d) service termination rights and obligations as set forth in this rule;

(e) tips for budget billing plans; and

(f) payment plans and payments;

G. "LIHEAP" means the low-income home energy assistance program administered by the New Mexico human services department or a tribe's or pueblo's low-income home energy assistance program administered under Section 27-6-18.1 NMSA 1978;

H. "New Mexico energy$mart" means the low-income weatherization assistance program administered by the New Mexico finance authority;

I. "payment agreement" means an agreement between a dealer and a customer in which the customer makes a series of payments scheduled over a period of more than forty-five (45) days to pay the customer's past due balances;

J. "propane" means liquefied petroleum gas and LP gas;

K. "residential customer" means a person who purchases propane from a dealer to heat the interior of a dwelling house or other structure used as a residence, who is legally liable for the payment of those purchases and who does not purchase propane for resale;

L. "service" means the provision of propane by a dealer to a customer to heat the interior of a dwelling or other structure or to heat water;

M. "schedule of charges" means the documentation provided by the dealer to the customer identifying and serving as notice of all relevant charges and fees and prices related to propane services.
[17.10.2.7 NMAC - N, 12-15-10]

17.10.2.8 VARIANCE: Dealers or customers seeking a variance from this rule shall follow the commission's procedure in 1.2.2.40 NMAC.
[17.10.2.8 NMAC - N, 12-15-10]

17.10.2.9 TANK RENTAL, OWNERSHIP AND REMOVAL:

A. Rentals: a dealer shall disclose to customers, in writing, upon initiation of service and upon request, all annual tank rental fees, including fees for tank removal, propane pump-out, minimum fills and partial fills.

B. Ownership: a customer may use his own tank and regulator.

C. Removal of rental tank: a customer may change propane dealers for any reason, absent a contractual agreement to the contrary. When a customer who rents a tank from a dealer lawfully changes dealers, the first dealer shall remove its rental tank from the customer's property within thirty (30) days after receiving written notice of the change and shall issue a refund within thirty (30) days for the unused propane and tank rental balances due under terms of the tank rental agreement.
[17.10.2.9 NMAC - N, 12-15-10]

17.10.2.10 BUDGET BILLING PLANS:

A. A dealer should offer reasonable budget billing plans to its residential customers. The offer of budget billing plans shall not be unreasonably withheld.

B. Budget billing plans shall be binding contracts under New Mexico law and shall be in writing. The pricing and time period language shall be printed in no less than 12-point boldface type of uniform font.

C. Budget billing plans may include a requirement for a deposit sufficient to ensure full payment to the dealer.

D. A budget billing plan shall provide that if a credit remains at the end of the budget billing plan term, that credit, including any deposit, shall be reimbursed to the residential customer not later than thirty (30) days after the end date of the plan, unless the dealer and residential customer agree otherwise.
[17.10.2.10 NMAC - N, 12-15-10]

17.10.2.11 PAYMENTS AND PAYMENT AGREEMENTS:

A. A dealer shall make a reasonable effort to enter into a payment agreement with a residential customer with a delinquent or past due account.

B. Payment agreements shall be binding contracts under New Mexico law and shall be in writing. The pricing and time period language shall be printed in no less than 12-point boldface type of uniform font.

C. A dealer shall make reasonable efforts to provide service to a residential customer who offers cash payments.

D. A dealer shall make reasonable efforts to incorporate LIHEAP payments, if applicable, into payments and payment plans.
[17.10.2.11 NMAC - N, 12-15-10]

17.10.2.12 CONTENTS OF BILLS AND METERED FUEL TICKETS:

A. **Bills for propane goods, services and equipment shall include:**

(1) the number of gallons metered;

(2) the date the bill is due;

(3) the amount due for, and explanation of, special services and fees including but not limited to, hazardous materials and environmental fuel surcharges;

(4) the total amount due for a previous balance separately presented from the current charges;

(5) gross receipts taxes and any other taxes, if not part of the base rate;

(6) the address and phone number of the dealer designating where the customer may initiate an inquiry or complaint regarding the bill as rendered of the service

provided;

(7) the toll-free number of the consumer relations division of the commission, together with a statement advising customers that they may contact the commission if they are unable to resolve a billing dispute with the dealer; and

(8) a current copy in English and Spanish of the document IINMPC to be provided upon initiation of service for new customers, and annually in October for existing customers.

B. Metered fuel tickets:

(1) for those customers who receive metered fuel tickets, if the information in Paragraphs (1)-(7) of Subsection A of this section (above) is omitted from the ticket, dealers shall provide it on a document either attached to the ticket or mailed to the customer within thirty (30) days of delivery;

(2) the document IINMPC shall be provided upon initiation of service for new customers, and annually in October for existing customers.

[17.10.2.12 NMAC - N, 12-15-10]

17.10.2.13 PUBLIC NOTICE OF CUSTOMER RIGHTS: A dealer shall display a current copy of the IINMPC document in English and Spanish at all of its retail locations and on its website if applicable, and shall make this information available to the general public upon request. The document shall contain the telephone number for filing a complaint with the consumer relations division of the commission.

[17.10.2.13 NMAC - N, 12-15-10]

17.10.2.14 NOTICE, AVAILABILITY AND PUBLIC ACCESS TO SCHEDULE OF CHARGES: A dealer shall keep for at least ninety (90) days and provide public access to, its current charges for service, including the current price of propane and pricing categories used to establish customer rate variations. This information shall be available to customers and potential customers upon request. The dealer shall make this information available in writing to new customers before an agreement is entered to commence propane service and to existing customers with the next propane delivery after the effective date of this rule. A dealer is not required to disclose prices under special agreements.

[17.10.2.14 NMAC - N, 12-15-10]

17.10.2.15 REPORTS TO THE COMMISSION: A dealer shall report the information required by Section 17.10.2.14 NMAC within ten (10) business days upon commission request.

[17.10.2.15 NMAC - N, 12-15-10]

17.10.2.16 QUOTED PRICES AND CHARGES: When a customer places a valid order for propane, the dealer shall honor the quoted price for the requested delivery, even if the actual delivery is at some other date for reasons not caused by the customer.

[17.10.2.16 NMAC - N, 12-15-10]

17.10.2.17 MINIMUM QUANTITY REQUIREMENT: Prior to delivery, a dealer shall notify customers of the minimum quantity of propane required for their tank size, and of the charges for that minimal fill and for partial fills below the minimal amount. A dealer shall use reasonable efforts to help a customer maintain an adequate supply of propane. A dealer shall not require a customer to make a minimum purchase of more than 100 gallons at a time or more than the total capacity of the customer's existing tank, whichever is less, unless the customer and the dealer have entered into a budget billing plan. This applies to all deliveries, including the initial installation.

[17.10.2.17 NMAC - N, 12-15-10]

17.10.2.18 CUSTOMER RECORDS:

A. Upon request, a dealer shall furnish to the customer copies of the customer's records for the prior twelve months. A dealer may charge a reasonable fee for copying these records.

B. A dealer shall furnish copies of a customer's records relevant to a matter in dispute to anyone authorized in writing by the customer to receive these records.

C. A dealer shall correct any non-disputed mistakes in a customer's payment history that are brought to its attention.

[17.10.2.18 NMAC - N, 12-15-10]

17.10.2. 19. COMPLAINTS:

A. A dealer shall fully and promptly investigate and respond to all oral and written complaints made directly to the dealer by customers or prospective customers. The dealer shall make a good faith attempt to resolve the complaint and shall promptly notify the customer of its proposed disposition of the complaint, but no later than thirty (30) business days after the complaint was made. The dealer shall send written confirmation of its proposed disposition of the complaint to the customer.

B. If a dealer cannot resolve a complaint to a customer's satisfaction, the dealer shall provide the complainant with the name, address and current local or toll-free telephone number of the consumer relations division of the commission.

C. At any time, a customer may file an informal complaint against a dealer by contacting the consumer relations division or may file a formal complaint with the commission, as stated in 1.2.2.13 NMAC through 1.2.2.15 NMAC. For Native Americans requesting help with translation, commission staff should contact the appropriate tribal or pueblo official for assistance.

D. Nothing in this rule shall bar customers or the attorney general from pursuing remedies for complaints under the Unfair Practices Act, Sections 57-12-1 through 57-12-26 NMSA 1978. Nothing in this rule shall bar customers from pursuing remedies for disputes in New Mexico courts.

[17.10.2.19 NMAC - N, 12-15-10]

HISTORY OF 17.10.2 NMAC: [RESERVED]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.1.9 NMAC, Section 8 effective 12/15/2010.

3.1.9.8 **CLAIM FOR REFUND - GENERAL:**

A. Any person may submit a written claim for refund to the department when the person believes the person: 1) has made payment of or had withheld from that person any tax in excess of that for which the person was liable; 2) has been denied any credit or rebate claimed; or 3) has a claim of prior right to property possessed by the department pursuant to a levy. The secretary has not been given statutory authority to initiate action in the circumstances specified in numbers 1), 2) and 3) above. The person affected must initiate the claim for refund. The filing of a fully completed income, corporate income and franchise, estate or special fuel excise tax return or a fully completed amended income, corporate income and franchise, estate or special fuel excise tax return showing an overpayment of tax, a credit or rebate claimed will constitute the filing of a claim for refund and no separate claim for refund is required.

B. "Fully completed" means a return which complies with all the instructions for the return and contains all attachments required by those instructions.

C. A written claim for refund is timely if it meets the requirements for validity of [~~Section~~] 3.1.9.8 NMAC and is transmitted, delivered or mailed to the department prior to the expiration of the statutory time limits in Section 7-1-26 NMSA 1978.

D. A claim for refund is valid if it states the nature of the complaint and affirmative relief requested and if it contains information sufficient to allow the processing of the claim.

E. Information sufficient to allow processing of a claim includes:

(1) taxpayer's name, address and identification number;

(2) the type or types of tax for which the refund is being claimed;

(3) the sum of money being claimed;

(4) the period for which the overpayment was made;

(5) the basis for the refund; and

(6) a copy of the appropriate, fully completed amended return for each period for which a refund is claimed.

F. [~~This version of Section 3.1.9.8 NMAC is retroactively applicable to refund claims made on or after January 1, 1998.~~

~~G.~~] A claim that does not include the information required by Subsections D and E of 3.1.9.8[~~D and E~~] NMAC is invalid. The department may return any invalid claim to the taxpayer. Alternatively the department may advise the taxpayer of the missing information and that the claim is invalid without submission of the missing information. If the taxpayer re-submits the claim with the required information or, when the return is not returned, submits all required information, the claim becomes valid only at the time the claim is re-submitted or the required information is supplied.

[~~H.~~] G. Example: A taxpayer submits an income tax return showing an amount due the taxpayer. The taxpayer either omits entering a social security account number or enters an obviously incorrect number. In either case, the income tax return is not fully completed and the taxpayer has failed to provide a proper identification number. The return is not a valid claim for refund.

H. Effective January 1, 2012, an information return is not a claim for refund.

[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96, 1/15/99; 3.1.9.8 NMAC - Rn & A, 3 NMAC 1.9.8, 1/15/01; A, 12/15/10]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.3.1 NMAC, Section 9 effective 12/15/2010.

3.3.1.9 **RESIDENCY**

A. **Full-year residents.** For purposes of the Income Tax Act, the following are full-year residents of this state:

(1) an individual domiciled in this state during all of the taxable year, or

(2) an individual other than an individual described in Subsection D of this section who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile.

B. **Part-year residents.**

(1) An individual who is domiciled in New Mexico for part but not all of the taxable year, and who is physically present in New Mexico for fewer than 185 days, is a part-year resident.

(a) During the first taxable year in which an individual is domiciled in New Mexico, if the individual is physically present in New Mexico for less than a total of 185 days, the individual will be treated as a non-resident of New Mexico for income tax purposes for the period prior to establishing domicile in New Mexico.

(b) An individual domiciled in New Mexico who is physically present in New Mexico for fewer than 185 days and changes his domicile to a place outside this state with the bona fide intention of continuing to live permanently outside New Mexico, is not a resident for Income Tax Act purposes for periods after that change of domicile.

(2) An individual who moves into this state with the intent to make New Mexico his permanent domicile is a first-year resident. A first-year resident should report any income earned prior to moving into New Mexico as nonresident income even if he is physically present in New Mexico for 185 days or more.

C. **"Domicile" defined:**

(1) A domicile is the place where an individual has a true, fixed home, is a permanent establishment to which the individual intends to return after an absence, and is where the individual has voluntarily fixed habitation of self and family with the intention of making a permanent home. Every individual has a domicile somewhere, and each individual has only one domicile at a time.

(2) Once established, domicile does not change until the individual moves to a new location with the bona fide intention of making that location his or her permanent home.

(3) No change in domicile results when an individual leaves the state if the individual's intent is to stay away only for a limited time, no matter how long, including:

(a) for a period of rest or vacation;

(b) to complete a particular transaction, perform a contract or fulfill an engagement or obligation, but intends to return to New Mexico whether or not the transaction, contract, engagement or obligation is completed, or

(c) to accomplish a particular purpose, but does not intend to remain in the new location once the purpose is accomplished.

(4) To determine domicile, the department shall give due weight to an individual's declaration of intent. However, those declarations shall not be conclusive where they are contradicted by facts, circumstances and the individual's conduct. In particular, the department will consider the following factors in determining whether an individual is domiciled in New Mexico (the list is not intended to be exclusive and is in no particular order):

(a) homes or places of abode owned or rented (for the individual's use) by the individual, their location, size and value; and how they are used by the individual;

(b) where the individual spends time during the tax year and how that time is spent; e.g., whether the individual is retired or is actively involved in a business, and whether the individual travels and the reasons for traveling, and where the individual spends time when not required to be at a location for employment or business reasons, and the overall pattern of residence of the individual;

(c) employment, including how the individual earns a living, the location of the individual's place of employment, whether the individual owns a business, extent of involvement in business or profession and location of the business or professional office, and the proportion of in-state to out-of-state business activities;

(d) home or place of abode of the individual's spouse, children and dependent parents, and where minor children attend school;

(e) location of domicile in prior years;

(f) ownership of real property other than residences;

(g) location of transactions with financial institutions, including the individual's most active checking account and rental of safety deposit boxes;

(h) place of community affiliations, such as club and professional and social organization memberships;

(i) home address used for filing federal income tax returns;

(j) place where individual is registered to vote;

(k) state of driver's license or professional licenses;

(l) resident or nonresident status for purposes of tuition at state schools, colleges and universities, fishing and hunting licenses, and other official purposes; and

(m) where items or possessions that the individual considers "near and dear" to his or her heart are located, e.g., items of significant sentimental or economic value (such as art), family heirlooms, collections or valuables, or pets.

(5) The department shall evaluate questions regarding domicile on a case-by-case basis. No one of the factors considered by the department shall be conclusive with respect to an individual's domicile. Factors

such as the state of driver's license, place of voter registration and home address may be given less weight, depending on the circumstances, because they are relatively easy to change for tax purposes.

D. **"Domicile" and residency for armed forces personnel**

(1) A resident of this state who is a member of the United States armed forces does not lose residence or domicile in this state, or gain residency or domicile in another state, solely because the service member left this state in compliance with military orders.

(2) A resident of another state who is a member of the United States armed forces does not acquire residence or domicile in this state solely because the service member is in this state in compliance with military orders.

(3) A resident of another state who is a member of the United States armed forces does not become a resident of this state solely because the service person is in this state for one hundred and eighty-five (185) or more days in a taxable year.

(4) Compensation for service in the armed forces is subject to personal income tax only in the state of the service member's domicile. "Compensation for military service" does not include compensation for off-duty employment, or military retirement income.

(5) For purposes of this section, "armed forces" means all members of the army of the United States, the United States navy, the marine corps, the air force, the coast guard, all officers of the public health service detailed by proper authority for duty either with the army or the navy, reservists placed on active duty, and members of the national guard called to active federal duty.

E. **Examples:**

(1) A, a life-long resident of Texas, accepts a job in New Mexico. On December 5, 2003, A moves to New Mexico with the intention of making New Mexico her permanent home. A has established domicile in New Mexico during the 2003 tax year. Because she was physically present in New Mexico for fewer than 185 days during that year, she should file as a part-year resident, and she will be treated as a resident for personal income tax purpose only for that period after she establishes a New Mexico domicile.

(2) B, a resident of Arizona, makes several weekend visits to New Mexico in the early months of 2004. On July 1, 2004, he moves to New Mexico with the intention of making it his permanent home. Family matters call him back to Arizona on August 1, 2004, and he soon determines that he must remain in Arizona. B was domiciled in New Mexico during the thirty days he spent in this state with the intention of making it his permanent home. Because B was physically present in this state for fewer than 185 days in 2004, B should file as a part-year resident for that tax year. For personal income tax purposes he will be treated as a resident of New Mexico only from July 1 to August 1, 2004.

(3) C was born and raised in New Mexico. She leaves New Mexico in December 2003 to pursue a two-year master's degree program in Spain. She intends to return to New Mexico when she completes her studies. During her absence she keeps her New Mexico driver's license and voter registration. Because New Mexico remains her domicile, C should file returns for tax years 2003, 2004 and 2005 as a full-year New Mexico resident.

(4) D, a resident of California, comes to New Mexico on three separate occasions in 2004 to work on a movie. D does not intend to remain in New Mexico, and when the movie is completed, D returns to her home in California. D is physically present in New Mexico for 200 days in 2004. Because D was physically present in New Mexico for at least 185 days, D must file as a full-year resident of New Mexico for tax year 2004.

(5) E, a resident of New Mexico, joined the army. Since joining the military, E has been stationed in various places around the world. Although E has not been back to New Mexico in the ten years since he joined the army, he continues to vote in New Mexico and holds a current New Mexico driver's license. E must file as a full-year resident of New Mexico.

(6) Same facts as Example 5, except that in August 2003, while stationed in Georgia, E retires from the military. Instead of returning to New Mexico, E moves to Florida where he intends to spend his retirement. For tax year 2003, E must file as a part-year resident, because he was not physically present in the state for 185 days or more. E is a resident of New Mexico until August 2003, when he moves to Florida with the intent of making that his permanent home.

(7) F, a resident of Texas, is an air force officer. In March 2002 he moves to New Mexico [~~with his spouse~~] to begin a two-year assignment at Kirtland Air Force Base. F is registered to vote in Texas and holds a Texas driver's license. F is not a resident of New Mexico in 2002. [~~F's spouse is a full-year resident of New Mexico in 2002, regardless of domicile, because she is physically present in New Mexico for 185 days or more.~~] During the second year of F's assignment, he registers to vote in New Mexico, obtains a New Mexico driver's license, and enrolls his son in a New Mexico university paying resident tuition. Although F's presence in New Mexico under military orders is not sufficient to establish New Mexico residency or domicile, his conduct in 2003 is sufficient to establish domicile. In 2003 F must file as a part-year resident of New Mexico. He will be treated as a non-resident for income tax purposes for that period of 2003 prior to establishing domicile in New Mexico.

(8) G is a Native American who lives and works on his tribe's pueblo in New Mexico. Federal law prohibits the state from taxing income earned by a Native American who lives and works on his tribe's territory. G joins the marines and is stationed outside New Mexico. Because G's domicile remains unchanged during his military service, G's income from military service is treated as income earned on the tribe's territory by a tribal member living on the tribe's territory, and is not taxable by New Mexico.

[10/23/85, 12/29/89, 3/16/92, 6/24/93, 1/15/97; 3.3.1.9 NMAC - Rn & A, 3 NMAC 3.1.9, 12/14/00, A, 4/29/05; A, 4/28/06; A, 12/15/10]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.3.2 NMAC, Section 10 effective 12/15/2010.

3.3.2.10 **WITHHOLDING BY PASS-THROUGH ENTITIES**

A. **Withholding by pass-through entities; rate.** For periods beginning on or after January 1, 2004 and ending prior to January 1, 2011, the rate of withholding by pass-through entities pursuant to the provisions of Subsection D of Section 7-3-12 NMSA 1978 shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

B. **Withholding by pass-through entities; agreements; reasonable cause.** The obligation to collect and remit withholding amounts pursuant to Subsection D of Section 7-3-12 NMSA 1978 may be avoided if the nonresident owner submits to the pass-through entity an agreement authorized by Subsection E of that section in the form and manner prescribed by the secretary. An agreement may be restricted to a single taxable year, may cover multiple years or may be put into effect for an indefinite term subject to revocation by the nonresident owner. An agreement must be in the possession of the pass-through entity at the time the pass-through entity files its return for the taxable year to which the agreement pertains. When a nonresident owner becomes a resident of New Mexico, the agreement submitted by that owner is revoked automatically, effective for the taxable year in which the change in residence took place. The obligation to withhold may also be avoided if the pass-through entity demonstrates that failure to withhold is due

to a reasonable cause pursuant to Subsection B of Section 7-3-5 NMSA 1978.

C. **Due date exception.** The due date specified in Section 7-3-6 NMSA 1978 does not apply to payment of amounts withheld in accordance with Section 7-3-12 NMSA 1978. The due date specified in Section 7-3-12 NMSA 1978 with respect to such amounts controls.

D. **Crediting to tax year.** Amounts withheld pursuant to the provisions of Section 7-3-12 NMSA 1978 with respect to an owner shall be credited to the owner for the same taxable year for which the income is required to be reported for federal income tax purposes.

E. Withholding by pass-through entities for periods beginning on or after January 1, 2011 is governed by the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act and 3.3.5 NMAC. 3.3.2.10 NMAC does not apply to such withholding by pass-through entities after December 31, 2010 except as provided in Subsection E of 3.3.5.16 NMAC.

[12/31/99; 3.3.2.10 NMAC - Rn & A, 3 NMAC 3.2.10, 12/14/00, A, 10/31/05; A, 12/15/10]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.3.5 NMAC, Sections 2, 6, 7, and 10 through 18 effective 12/15/2010.

3.3.5.2 **SCOPE:** This part applies to all remitters of oil and gas proceeds from New Mexico wells and to pass-through entities.

[3.3.5.2 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the [~~Oil and Gas Proceeds Withholding Tax Act~~] Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

[3.3.5.6 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.7 **DEFINITIONS:** For the purposes of [~~Section 3.3.5.7~~] 3.3.5 NMAC:

A. [~~"gross amounts subject to withholding"~~] "gross amount" includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter. If a taxpayer receives a Form 1099-MISC for its oil and gas proceeds, the gross amount is the amount reported on federal Form 1099-MISC in box 2, royalties, and in box 7, nonemployee compensation;

B. "resident of New Mexico" means (1) an individual domiciled in this state during all of the taxable year, or (2) an individual other than an individual described in Subsection D of 3.2.1.9 NMAC who is physically present in this state for a total of one hundred eighty-five (185) days or more in the aggregate during the taxable year, regardless of domicile or (3) an individual who moves into this state with the intent to make New Mexico his permanent domicile; and

C. "net income" means "net income" as defined in Section 7-3A-2C NMSA 1978, after appropriate allocation and apportionment to New Mexico in accordance with the Uniform Division of Income for Tax Purposes Act.

[3.3.5.7 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.10 **WITHHOLDING RATES:**

A. For periods beginning on or after January 1, 2005 and before January 1, 2011, the rate of withholding shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

B. For periods beginning on or after January 1, 2011, the rate of withholding pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act shall be set by directive of the secretary. The withholding rate set in the directive shall be effective no earlier than ninety (90) days after the date on which the directive is promulgated. The directive shall be posted on the taxation and revenue department's web site, along with past, current and, when the rate is announced to change at a future time, future withholding rates and the time periods to which they pertain.

[3.3.5.10 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.11 **WITHHOLDING MINIMUMS:** [~~No withholding is required if the amount withheld from any payment to a remittee is less than ten dollars ($10.00), but the remitter may withhold from such payment without creating a right of action by the remittee against the remitter.~~]

A. With respect to oil and gas proceeds, no withholding from a payment to a remittee is required if:

(1) the sum of all payments, including the subject payment, to that remittee by the remitter in the calendar quarter does not exceed thirty dollars ($30.00); and

(2) the amount to be withheld from the subject payment is less than ten dollars ($10.00).

B. With respect to net income from pass-through entities, no withholding is required from a payment to an owner if the sum of all payments, including the subject payment, to that owner by the pass-through entity in the calendar quarter is less than thirty dollars ($30.00).

C. The remitter may withhold from a payment described in Subsection A or B of this section without creating a right of action by the remittee or owner against the remitter or pass-through entity.

D. This version of 3.3.5.11 NMAC applies to payments for periods beginning on or after January 1, 2011.

[3.3.5.11 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.12 **REMITTEES WITH A NEW MEXICO ADDRESS:** With respect to payments made for periods prior to January 1, 2011, a remitter is not obligated to deduct and withhold under the Oil and Gas Proceeds Withholding Tax Act from payments to a [~~remittee's~~] remittee with a New Mexico address. The relevant address for purposes of Section 7-3A-3 NMSA 1978 is the remittee address to which federal Form 1099-MISC is mailed or otherwise transmitted, or the address that is shown on federal Form W-9 or similar form. If federal law does not require the remitter to mail a federal Form 1099-MISC to the remittee, and the remitter has not received a federal Form W-9 or similar form, the relevant address is the address to which the oil and gas proceeds are mailed or otherwise transmitted. This section does not apply to payments for periods beginning on or after January 1, 2011. See 3.3.5.16 NMAC for equivalent provisions for withholding for periods beginning on or after January 1, 2011.

[3.3.5.12 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.13 **[~~REMITTEES WHO ARE~~] PAYMENTS TO 501(C)(3) ORGANIZATIONS:** A remitter or pass-through entity is not obligated to deduct and withhold under the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act from payments to a remittee or owner granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the [~~United States~~] Internal Revenue Code [~~of 1986, as amended~~]. Acceptable proof that a remittee or owner is a 501(c)(3) organization includes a copy of the remittee's or owner's federal Form W-9, or a copy of the determination letter from the internal revenue service granting the remittee or owner 501(c)(3) status. This version of 3.3.5.13 NMAC applies to payments for periods beginning on or after January 1, 2011.

[3.3.5.13 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.14 **"REASONABLE CAUSE" FOR NOT WITHHOLDING:** In addition to the cause set forth in Subsection C of Section 7-3A-5 NMSA 1978, the department will accept as "reasonable

cause" for not withholding [~~includes, but is not limited to~~] the following:

A. written notification from a remittee that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners [~~and/or~~] or production payment interest owners;

B. internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners [~~and/or~~] or production payment interest owners;

C. through December 31, 2011, reliance on a New Mexico address supplied by the remittee; the remitter may rely on a New Mexico address supplied by the remittee for up to thirty (30) days after receiving written notice from the remittee of a change in address to an address outside New Mexico; [~~and~~]

D. receipt of a written agreement from a remittee or owner under 3.3.5.17 NMAC that the remittee or owner will timely report and pay [~~tax on~~] amounts required to be withheld and remitted; [~~The agreement must be in a form prescribed by the department. It must be in the remitter's possession at the time it files its annual statement of withholding. The remittee may choose that the agreement remain in effect for a single taxable year, multiple taxable years, or an indefinite term subject to the remittee's revocation.~~]

E. inability to make payment of withholding from net income for the quarter due to nonavailability of cash or due to contracts and other binding written covenants with unrelated third parties, unless cash payments have been made to any owner during the quarter, in which case the pass through entity is liable for payment of the withholding amount due up to the extent of the cash payment made during the quarter;

F. with respect to tax years 2014 through 2018, the pass-through entity has elected pursuant to 26 USC 108(i) to defer income from the discharge of indebtedness in connection with the reacquisition after December 31, 2008 and before January 1, 2011 of an applicable debt instrument for the period 2014 through 2018 and the entity has insufficient cash to remit the withholding amount due on the deferred income reported in the year; and

G. any other reason acceptable to the secretary, to be determined on a case-by-case basis.

[3.3.5.14 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.15 **STATEMENTS OF WITHHOLDING AND INFORMATION RETURNS**

A. Each remitter shall:

(1) provide a federal Form 1099-MISC to each remittee on or before February 15 of the year following the year for which the statement is made, reflecting the proceeds paid to the remittee and the state tax withheld;

(2) file an "annual summary of oil and gas proceeds withholding tax" information return with the department on or before the last day of February of the year following the year for which the statement is made; and

(3) attach to the "annual summary of oil and gas proceeds withholding tax" information return copies of federal Form 1099-MISC for each remittee of oil and gas proceeds from whom withholding was required. Remitters who submit federal Form 1099-MISC information returns by magnetic media or electronic transfer using the combined federal/state program, with the records coded to be forwarded to New Mexico, are not required to submit paper copies of federal Form 1099-MISC with the annual summary.

B. Remitters who are not required by federal law to file a federal Form 1099-MISC but have a withholding tax obligation pursuant to the Oil and Gas Proceeds Withholding Tax Act must provide New Mexico an "annual statement of withholding of oil and gas proceeds," a pro forma federal Form 1099-MISC, or a form containing equivalent information, to each remittee and file a copy with the department to satisfy the filing requirements of the Oil and Gas Proceeds Withholding Tax Act.

C. If a pass-through entity is not required to file a federal income tax return for the taxable year, the entity shall file an annual information return with the department not later than one hundred five (105) days after the end of its taxable year and provide to each of its owners sufficient information to enable the owner to comply with the provisions of the Income Tax Act or Corporate Income and Franchise Tax Act with respect to the owner's share of the net income.

[3.3.5.15 NMAC - N, 10/15/03; A, 12/15/10]

3.3.5.16 **PRINCIPAL PLACE OF BUSINESS OR RESIDENCE IN NEW MEXICO**

A. Remitters and pass-through entities are not required to withhold from corporations whose principal place of business is in New Mexico or from individuals who are residents of New Mexico. If the corporation establishes that its place of business is in New Mexico or an individual establishes that his or her residence is in New Mexico, it does not matter where remittances to the corporation or individual are sent.

B. Corporations: If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments to the corporation because the corporation is described in Paragraphs (2) through (4) of Subsection C of Section 7-3A-3 NMSA 1978 or the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3 NMSA 1978, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the corporation's principal place of business is in New Mexico except as provided in Subsection E of this section.

(1) Corporations incorporated in New Mexico: The remitter or pass-through entity may establish that the corporation's principal place of business is in New Mexico by acquiring and retaining a copy of the corporation's incorporation papers, sufficient portions of those papers to demonstrate incorporation in New Mexico, or information from the public regulation commission website indicating that the corporation is a New Mexico corporation in good standing and its address.

(2) Corporations incorporated in New Mexico or elsewhere: The remitter or pass-through entity may establish that the corporation's principal place of business is in New Mexico by acquiring and retaining from the corporation a statement, signed under penalty of perjury or notarized, that the corporation's principal place of business is in New Mexico and setting forth the physical location of that principal place of business; provided that a post office box number, address of a postal forwarding service or equivalent addresses or the address of a bank, agent or nominee of the corporation are not acceptable as a physical location of the corporation for the purposes of Section 7-3A-3 NMSA 1978.

C. Individuals: If a remitter or pass-through entity is not excused from the obligation to deduct and withhold from payments to the individual because the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3 NMSA 1978, the obligation to deduct and withhold remains in force until the remitter or owner establishes that the individual is a resident of New Mexico except as provided in Subsection E of this section. The remitter or pass-through entity may establish that the individual is a resident of New Mexico by acquiring and retaining a statement, signed under penalty of perjury or notarized that the individual is a resident of New Mexico and setting forth the physical location of the individual's abode in New Mexico; provided that a post office box number, address of a postal forwarding service or equivalent addresses or the address of a bank, agent or nominee of the individual are not acceptable as a physical location of the individual for

the purposes of Section 7-3A-3 NMSA 1978.

D. The obligation to deduct and withhold applies with respect to all remittees and owners that are not corporations or individuals regardless of the remittee's or owner's physical or mailing address, effective January 1, 2011, unless the remitter or pass-through entity is party to an agreement in force with the remittee or owner pursuant to Subsection H of Section 7-3A-3 NMSA 1978.

E. To ease the transition to the new requirements of this section, remitters and pass-through entities may continue to rely on New Mexico addresses pursuant to 3.3.5.12 NMAC for withholding for calendar quarters ending prior to January 1, 2012.

[3.3.5.16 NMAC - N, 12/15/10]

3.3.5.17 OPTIONAL WITHHOLDING PAYMENT BY REMITTEE, OWNER

A. A remitter may enter into an agreement with a remittee that the remittee will remit to the taxation and revenue department at the time and in the manner required by the department the amounts that the remitter is required to withhold and remit with respect to payments to the remittee. Similarly, a pass-through entity may enter into an agreement with an owner that the owner will remit to the department the amounts that the pass-through entity is required to withhold and remit with respect to payments to the owner.

B. The agreement must be in a form prescribed by the department or substantially equivalent to such form. It must be in the remitter's or pass-through entity's possession at the time it files its annual statement of withholding pursuant to Section 7-3A-7 NMSA 1978. The agreement may remain in effect for a single taxable year, multiple taxable years, or an indefinite term, and may be revoked or amended on mutual agreement of the parties.

C. Remittances to the department pursuant to an agreement by a remittee or owner that is subject to corporate income tax or personal income tax may be credited against the remittee's or owner's estimated tax liability pursuant to Section 7-2A-9.1 NMSA 1978 or Section 7-2-12.2 NMSA 1978 since the remittances relate to the remitter's or owner's own corporate income tax or personal income tax liability.

[3.3.5.17 NMAC - N, 12/15/10]

3.3.5.18 **DISREGARDED ENTITIES**

A. The term "pass-through entity," in addition to the exclusions listed in Subsection H of Section 7-3A-2 NMSA 1978, also excludes entities treated as "disregarded entities" for federal income tax purposes. These include qualified subchapter S subsidiaries, as defined in 26 USC Section 1361(b)(3)(B), partnerships electing under 26 USC Section 761(a) to be treated as disregarded entities, qualified joint ventures, as defined in 26 USC Section 761(f), and qualified entities defined in internal revenue service revenue procedure 2002-69.

B. When a business association is treated as a disregarded entity for federal income tax purposes for only part of the association's taxable year, the association is subject to the withholding and reporting requirements of the Oil and Gas Proceeds and Pass-Through Entity Tax Withholding Act for that portion of the taxable year in which it is not treated as a disregarded entity and must submit an annual statement of withholding pursuant to Section 7-3A-7 NMSA 1978 covering that portion its taxable year in which the association was not treated as a disregarded entity.

[3.3.5.18 NMAC - N, 12/15/10]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.3.12 NMAC, Section 15 effective 12/15/2010.

3.3.12.15 **WHEN WITHHELD TAX NOT CONSIDERED ESTIMATED TAX:** Payment pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by an oil and gas proceeds remitter or a pass-through entity of withholding tax required to be withheld from payments to a remittee or an owner relate to the remittee's or owner's income tax or corporate income tax liability, not to the remitter's or pass-through entity's. Accordingly, when a remitter or pass-through entity is a person subject to personal income tax and has an obligation to pay estimated tax pursuant to Section 7-2-12.2 NMSA 1978, the person may not credit the amounts it withheld under Section 7-3A-3 NMSA 1978 from payments the person owes to remittees or owners against the person's own estimated tax liability. See 3.3.5.17 NMAC for treatment of withholding owed by remitter or pass-through entity but paid by remittee or owner pursuant to an agreement.

[3.3.12.15 NMAC - N, 12/15/10]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.4.9 NMAC, Section 12 effective 12/15/2010.

3.4.9.12 **WHEN WITHHELD TAX NOT CONSIDERED ESTIMATED TAX:** Payment pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act by an oil and gas proceeds remitter or pass-through entity of withholding tax required to be withheld from payments to a remittee or an owner relate to the remittee's or owner's income tax or corporate income tax liability, not to the remitter's or pass-through entity's. Accordingly, when a remitter or pass-through entity is a corporation that also has an obligation to pay estimated tax pursuant to Section 7-2A-9.1 NMSA 1978, the corporation may not credit the amounts it withheld under Section 7-3A-3 NMSA 1978 from payments the corporation owes to remittees or owners against the corporation's own estimated tax liability. See 3.3.5.17 NMAC for treatment of withholding owed by remitter or pass-through entity but paid by remittee or owner pursuant to an agreement.

[3.4.9.12 NMAC - N, 12/15/10]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates
2010

Volume XXI	Submittal Deadline	Publication Date
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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
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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
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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
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Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
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