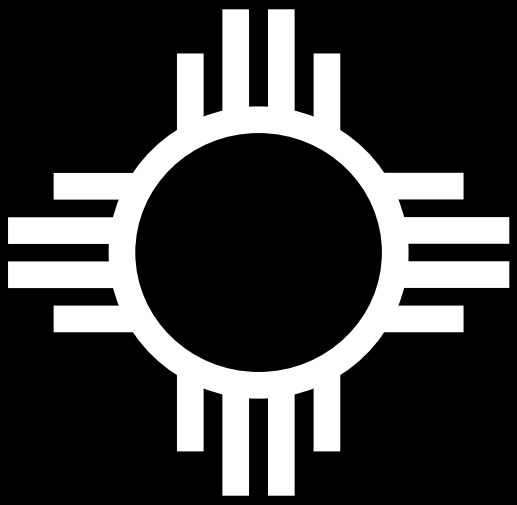
NEW MEXICO REGISTER



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New Mexico Register

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

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New Mexico Register

Volume XXII, Number 10
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Effective Date and Validity of Rule Filings

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

A=***Amended***, E=***Emergency***, N=***New***, R=***Repealed***, Rn=***Renumbered***

Other Material Related to Administrative Law

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

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Notices of Rulemaking and Proposed Rules

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
NOTICE OF HEARING AND REGULAR MEETING

On July 13, 2011, at 5:30 pm, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, One Civic Plaza NW, Albuquerque, NM.

The hearing will address: **Petition to Adopt 20.11.80 NMAC, *Adjudicatory Procedures – Environmental Health Department – Administrative Enforcement – Hearings by Director***

Adoption of proposed 20.11.80 NMAC is requested for the following reasons. When the Air Quality Division (Division) has initiated an administrative enforcement action against a Respondent for an alleged violation of an air quality permit or air quality act, ordinance, regulation or standard, and the Division and Respondent have not been able to resolve the alleged violation, the Department Director may issue an administrative Compliance Order as authorized by the New Mexico Air Quality Control Act, Chapter 74, Article 2, at NMSA 1978, Section 74-2-12(A)(1). The Compliance Order initiates an administrative enforcement action, as opposed to a civil or criminal action filed in court.

Historically, when a Respondent has received an administrative Compliance Order and requested an administrative enforcement hearing on the merits, the parties have referred to New Mexico Environmental Improvement Board (EIB) procedural regulation 20.1.5 NMAC, *Adjudicatory Procedures* - [NM] *Environment Department* for guidance. The EIB regulation was adopted to establish administrative adjudicatory procedures for many and varied state acts, including the New Mexico Air Quality Control Act, the Hazardous Waste Act, the Solid Waste Act, the Groundwater Protection Act and the Tire Recycling Act. Because the EIB regulation addresses a wide range of subjects, laws and terminology, some confusion has arisen regarding the procedures and terminology that should be applied to administrative enforcement actions initiated by the City's Environmental Health Department Director.

Proposed 20.11.80 NMAC provides the procedures that would apply to adjudicatory enforcement proceedings that are conducted by or on behalf of the Environmental Health Department Director, as authorized and required by the NM Air Quality Control Act at NMSA 1978, Sections 74-2-4, 74-2-5 and 74-2-12; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections, 4, 5 and 13; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-4, 9-5-1-5 and 9-5-1-98.

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the new 20.11.80 NMAC, *Adjudicatory Procedures – Environmental Health Department – Administrative Enforcement – Hearings by Director*.

The Air Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Local delegation authorizes the Air Board to administer and enforce the CAA and the New Mexico Air Quality Control Act, and to require local air pollution sources to comply with air quality standards and regulations.

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6.

Anyone intending to present technical testimony is required by 20.11.82 NMAC, *Rulemaking Procedures - AQCB*, to submit a written Notice Of Intent (NOI) before 5:00 pm on June 28, 2011 to: Attn: 20.11.80 NMAC, *Adjudicatory Procedures – Environmental Health Department – Administrative Enforcement – Hearings by Director* Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The NOI shall identify the person's name, address and affiliation.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on July 6, 2011. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to nbutt@cabq.gov and shall include the required name and address information.

Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or by phone 768-2660, or by e-mail at nbutt@cabq.gov , or by downloading a copy from the City of Albuquerque Air Quality Division website.

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

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

ENERGY CONSERVATION AND MANAGEMENT DIVISION

NOTICE OF PUBLIC HEARING OF THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
Agricultural Biomass Credit-Personal and Corporate Income Tax

The New Mexico Energy, Minerals and Natural Resources Department ("Department") will hold a public hearing at 1:00 P.M. Monday, June 20, 2011 in Porter Hall, Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, New Mexico.

The Department will conduct a public hearing on proposed rules 3.4.20 and 3.3.33 NMAC for administration of the Agricultural Biomass Tax Credit, as authorized by Sections 7-2-18.24 and 7-2a-24 of NMSA 1978 and the 2010 House Bill 171 ("Act").

Copies of the proposed rules and the Act

are available from the Department's Energy Conservation and Management Division ("ECMD"), 1220 South Saint Francis Drive, Santa Fe, NM 87505, on ECMD's website, http://www.cleanenergynm.org, or by contacting Colin Messer at 505-476-3311 or colinj.messer@state.nm.us.

All interested persons may participate in the hearing and will be given an opportunity to submit relevant evidence, data, views and arguments -- orally or in writing.

A person who wishes to submit a written statement, in lieu of providing oral testimony at the hearing, shall submit the written statement prior to the hearing to the address above or submit it at the hearing. No statements will be accepted after the conclusion of the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Colin Messer at least one week prior to the hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Colin Messer at 476-3314, through Relay New Mexico at 1-800-489-8536 Voice/ TTY, if a summary or other type of accessible format is needed.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD
NOTICE OF PUBLIC MEETING AND RULEMAKING HEARING

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on August 1, 2011 at 9:00 a.m. at the State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe NM 87501. The purpose of the hearing is to consider the matter of EIB 11-04 (R) proposed revisions to Air Quality Control Regulations 20.2.77 NMAC (New Source Performance Standards), 20.2.78 NMAC (Emission Standards for Hazardous Air Pollutants) and 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants).

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

NMED proposes to revise 20.2.77 NMAC to incorporate by reference federal New Source Performance Standards, 20.2.78 NMAC to incorporate by reference federal National Emission Standards for Hazardous Air Pollutants, and 20.2.82 NMAC to incorporate by reference federal Maximum Achievable Control Technology Standards for Source Categories.

The proposed revised regulations may be reviewed during regular business hours at the NMED Air Quality Bureau office, 1301 Siler Rd. building B, Santa Fe, New Mexico 87507. Full text of NMED's proposed revised regulations are available on NMED's web site at www.nmenv.state.nm.us, or by contacting Adam Keaster at (505) 476-5559 or adam.keaster@state.nm.us.

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

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

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

Notices of intent for the hearing must be received in the Office of the Board no later than 5:00 pm on July 15, 2011, and should reference the docket number, EIB 11-04 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Felicia Orth, Acting Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room 3056-N
Santa Fe, NM 87502
Phone: (505) 827-0339, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by July 15, 2011 at the NMED, Human Resources Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

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

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD
NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.7.11 NMAC (LIQUID WASTE TREATMENT AND DISPOSAL FEES).

The New Mexico Environmental Improvement Board (Board) will hold a public hearing beginning at 9:00 a.m. on August 1, 2011, and continuing thereafter as necessary at the New Mexico State Capitol Building, Room 317, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to August 1, and those interested in attending should check the EIB website: http://www.nmenv.state.nm.us/oots/eib.htm prior to the hearing. The purpose of the hearing is to consider proposed amendments to Liquid Waste Treatment and Disposal Fee Rules, 20.7.11 NMAC. Mr. Link Summers is the proponent of the amendments to the rules in EIB Docket Number 11-08(R). The amendments proposed by Mr. Summers would add additional requirements to the current regulation which requires the New Mexico

Environment Department ("NMED") to provide a biannual report for New Mexico. The additional requirements would require the Department to include the following information from appropriate authorities in the contiguous states of Texas, Oklahoma, Colorado, Utah, and Arizona:

1) Types of permits issued and the amount of the fee for each

2) Services rendered that are included in the fees including:

(a) Reports issued to other units of Government including Legislatures which indicate the success or failure of the program to complete its mission

(b) Licenses, certification, or training required for employment in the program - including inspectors.

(c) Continuing education and additional training requirements for employees of the program - including inspectors

(d) Itemization of costs for the different types of permits, both completed and rejected, including appeals.

(e) Whether inspections are performed, how many and what procedures they include and what percentage of total permits are inspected

(f) Costs to implement the program

(g) Costs to administer the program

(h) Sources of funding for the program

The proposed amendments would also require scheduled on-site inspections of in state septic tank manufacturers by a Department engineer at least once per year. In addition, amendments are proposed to the definition of "modify" and other sections of the rule.

The proposed changes may be reviewed during regular business hours at the office of the Environmental Improvement Board located in the Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. In addition, the proposed amendments are on the NMED website at http://www.nmenv.state.nm.us/fod/LiquidWaste/ . In addition, the Board may consider and make other changes as necessary to accomplish the purpose of the rule in response to public comments and evidence presented at the hearing.

Written comments regarding the proposed revisions may be addressed to Ms. Felicia Orth at the above address, and should reference docket number EIB 11-08(R).

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

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

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so on or before 5:00 pm on July 15, 2011. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rules; and,
- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on July 15, and should reference the name of the regulation, the date of the hearing, and docket number EIB 11-08 (R). Notices of intent to present technical testimony should be submitted to:

Felicia Orth, Acting Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2153
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact the Personnel Services Bureau by august 15, 2011. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 5469, Santa Fe, NM 87502-5469, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Thursday, June 9, 2011, beginning at 9:00 a.m., at the **New Mexico Farm & Ranch Heritage Museum - Tortugas Room, 4100 Dripping Springs Road, Las Cruces, NM 88011**, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Revocations; Revision of Commission Policy Regarding Rule Development; Review of Habitat Stamp Program ("Sikes Act") and Establishment of Guidelines for FY '13 Budget Preparation; State Land Easement for Hunting, Fishing, and Trapping Proposal for July, 2011 through June, 2012; Update on Department Involvement in the Mexican Wolf Re-Introduction Program; Management of the Artesia/Karr Farm and 7 Rivers/Brantley Wildlife Management Areas; Fiscal Year 2013 Budget Request Development; Open Gate Program Review and Approval of FY 2012 Fee Schedule; General Public Comments (Comments limited to 3 Minutes); Closed Executive Session; and Update on H Bar V Conservation Easement Purchase.

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

* Proposed Amendments to the Hunting and Fishing Application Rule, 19.31.3, NMAC; and
* Proposed Amendments to the Falconry Rule, 19.35.1, NMAC.

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

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Sonya Quintana at (505) 476-8027. Please contact Ms. Quintana at least

3 working days before the meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms upon request.

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

Notice of Public Hearing

The New Mexico Human Services Department will hold a public hearing to consider proposed rule to eliminate the Annual Clothing Allowance for school age children due to the elimination of funding from the budget for State Fiscal Year 2012, in the Human Services Register Vol. 34, No. 15. The public hearing to receive testimony on the proposed regulations will be held on July 1, 2011 at 10:00 am. The hearing will be held at the Income Support Division Conference Room at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 87505. The Conference Room is located in room 120 on the lower level. Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217.

The New Mexico Human Services Department is proposing to eliminate the Annual Clothing Allowance for school age children due to the elimination of funding from the budget for State Fiscal Year 2012. The proposed amendments align the regulations with the Human Services Department Secretary's statutory authority to comply with the Legislative and Executive appropriated budget by eliminating the allowance. House Bill 2 from the 50th Legislative Regular Session did not provide an appropriation for the Clothing Allowance for State Fiscal Year 2012. Prior budgets included a specific appropriation for the Annual Clothing Allowance for school age children. The Human Services Department proposes regulatory amendments consistent with NMSA 1978, §27-2B-7 (New Mexico Works Act) and, NMSA 1978, §27-2D-5 (Education Works Act).

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

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 pm on July 1, 2011. Please send comments to:

Sidonie Squier, Secretary
Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to: Vida.Tapia-Sanchez@state.nm.us

NEW MEXICO MEDICAL BOARD

NEW MEXICO MEDICAL BOARD

Notice

The New Mexico Medical Board will convene an Interim Board Meeting on Thursday, June 30, 2011 at 4:00 p.m. in the Conference Room, 2055 S. Pacheco, Building 400, Santa Fe, New Mexico. A Public Rule Hearing will be held at this time. The Board will reconvene after the Hearing to take action on the proposed rules. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.4 NMAC (Continuing Medical Education) 16.10.5 NMAC (Disciplinary Power of the Board) and 16.10.10 NMAC (Report of Settlements, Judgments, Adverse Actions and Credentialing Discrepancies.

Copies of the proposed rules will be available no later than June 23rd on request from the Board office at the address listed above, by phone (505) 476-7220, or on the Internet at www.nmmb@state.nm.us.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., June 23, 2011, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

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

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Tuesday, July 5, 2011 , from 9:00 A.M. to 12:00 P.M. The purpose of the public hearing will be to obtain input on the proposed amendments to 6.31.2 NMAC (Children with Disabilities/ Gifted Children).

Interested individuals may testify either at the public hearing or submit written comments to Leah Erickson, Executive Secretary Administrative Assistant, Special Education Bureau, Public Education Department, 120 South Federal Place, Room 206, Santa Fe, New Mexico 87501, via email at (spedfeedback@state.nm.us), or fax (505) 954-0001. Copies of the proposed amendments and the rationale for the changes may be accessed on the Department's website (http://ped.state.nm.us/) or obtained from Ms. Erickson. Written comments must be received no later than 5:00 P.M. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Erickson as soon as possible at (505) 827-1458. The Department requires at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The Commission of Public Records has scheduled a regular meeting for Tuesday, June 14, 2011, at 9:30 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1209 Camino Carlos Rey, Santa Fe, NM. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by June 6, 2011. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the meeting.

NOTICE OF RULEMAKING

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

Amendments
1.18.420 NMAC ERRDS, Regulation and Licensing Department
1.18.516 NMAC ERRDS, Department of Game and Fish
1.18.521 NMAC ERRDS, Energy, Minerals and Natural Resources Department
1.18.630 NMAC ERRDS, Human Services Department
1.18.790 NMAC ERRDS, Department of Public Safety
1.18.954 NMAC ERRDS, New Mexico State University (New part name will be Department of Agriculture)

Repeal
1.18.569 NMAC ERRDS, NM Organic Commodity Commission

NEW MEXICO SIGNED LANGUAGE INTERPRETING PRACTICES BOARD

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Signed Language Interpreting Practices Board will hold a rule hearing on Thursday, July 7, 2011. Following the rule hearing the Board will convene a regular meeting to take action on the proposed rules and take care of regular business. The rule hearing will begin at 10:00 a.m. and the regular meeting will convene following the rule hearing. The Board may enter into Executive Session pursuant to §10-15-1.H of the Open Meetings Act.

The meetings will be held at the Regulation and Licensing Department, 2550 Cerrillos Rd., Santa Fe, NM 87505, in the Rio Grande Conference Room.

The purpose of the rule hearing is to hear public testimony on adoption of proposed amendments and additions to the following Board Rules and Regulations in Title 16, Chapter 28 NMAC: Part 1 General Provisions, Part 2 Educational and Continuing Education Requirements, Part 3 Application and Licensure Requirements, Part 4 Complaint Procedures; Adjudicatory Proceedings, Part 5 Code of Professional Conduct, and Part 6 Fees.

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, calling (505) 476-4795, or from the board's website: http://www.rld.state.nm.us/signedlanguage/index.html after June 7, 2011. 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 June 23, 2011. Persons wishing to present their comments at the hearing will need ten (10) 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) 476-4795 at least two weeks prior to the meeting or as soon as possible.

Pauline M. Varela, Administrator
PO Box 25101- Santa Fe, New Mexico 87504

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

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

Gross Receipts and Compensating Tax Act
3.2.201.8 NMAC Section 7-9-43 NMSA 1978
(*Possession and Delivery of Nontaxable Transaction Certificates - Type of Certificates*)
3.2.201.10 NMAC Section 7-9-43 NMSA 1978
(*Documentation Required*)
3.2.205.8 NMAC Section 7-9-47 NMSA 1978
(*Delivery of the Nontaxable Transaction Certificate*)

These proposals were placed on file in the Office of the Secretary on May 17, 2011. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of these proposals, if filed, will be filed as required by law on or about July 29, 2011.

A public hearing will be held on these proposals on Wednesday, July 6, 2011, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before July 6, 2011.

3.2.201.8 **POSSESSION AND DELIVERY OF NONTAXABLE TRANSACTION CERTIFICATES - TYPES OF CERTIFICATES:**

A. With respect to receipts and transactions occurring prior to July 1, 1992 or after June 30, 1997:

(1) The taxpayer should be in possession of all nontaxable transaction certificates (nttcs) at the time the deductible transaction occurs.

(2) The taxpayer must be

in possession of and have available for inspection all nttcs for the period of an audit within 60 days of notice by the department requiring such possession. This notice may be sent out or delivered no earlier than the commencement of an audit of the taxpayer claiming the deduction.

(3) An nttc acquired by the taxpayer after the 60 days following notice have expired will not be honored by the department for the period covered by the audit.

(4) An nttc executed using the department's online system, and that is recorded on the online system, will be considered to be in the possession of the taxpayer to whom the nttc has been executed.

B. With respect to receipts and transactions occurring on or after July 1, 1992 and prior to July 1, 1997, the taxpayer is required to possess the appropriate nontaxable transaction certificate by the time the return is due for receipts from the transaction, except as otherwise provided herein. A certificate received after that time does not substantiate the deduction. The taxpayer must demonstrate possession of all certificates at the commencement of an audit. In the alternative, upon receipt of a notice requiring possession of the certificates, the taxpayer has sixty days to demonstrate that the taxpayer did in fact possess the certificates at the time the receipts were required to be reported. In the case where a notice requiring possession of the certificates has been given prior to July 1, 1997, demonstration that the certificates were possessed at the time the audit commenced or the notice was received is not adequate. In the case where notice requiring possession of the nttcs expired on or after July 1, 1997, the taxpayer must be in possession of and have available for inspection all nttcs for the period of an audit within 60 days of notice by the department requiring such possession.

C. An audit of such a taxpayer commences when one of the following occurs:

(1) a department auditor physically gives a dated letter of introduction which states the auditor is commencing an authorized audit of the taxpayer or states the auditor requires the production of the taxpayer's books and records for examination; or

(2) a department employee begins an authorized office examination of files, books or records pertaining to the taxpayer, provided that the taxpayer or the taxpayer's representative is informed reasonably promptly by letter or in person that an audit has commenced.

D. The department issues different types of nttcs. Each type is of limited usage and relates to a particular deduction allowed by possession of that certificate. An nttc is valid only if it contains the information and is in a form prescribed by the department. All other types of proof of deductibility are invalid and will not be accepted by the department, unless the deduction provision explicitly permits other proof.

E. The taxpayer need be in possession of only one nttc of the type required by the department from each buyer or lessee in order to claim the particular deduction allowed by that type of nttc. A taxpayer need be in possession of only one nttc of the type required by the department in order to claim a particular deduction from a buyer which has several places of business, provided the buyer is operating under only one department identification number.

F. Nothing shall prevent the department from changing the substance, form or type of nttcs to be used. Nothing shall prevent the department from changing the form of notification requiring the possession of nttcs.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 9/20/93, 11/15/96, 4/30/99; 3.2.201.8 NMAC - Rn, 3 NMAC 2.43.1.8, 5/31/01; A, XXX]

3.2.201.10 **DOCUMENTATION REQUIRED:**

A. Receipts which are deductible under the Gross Receipts and Compensating Tax Act can be deducted only if documentation justifying the deduction is maintained so it can be verified upon audit.

B. The following examples illustrate the documentation requirements.

(1) Example 1: X sells tangible personal property to Y, a governmental agency. X may deduct the sale if the government purchase order is retained or a copy of the check, the check stub or voucher identifying the source of payment is retained for audit purposes.

(2) Example 2: A, a grocer, makes a cash sale to C, a cafe. C has issued the appropriate type nontaxable transaction certificate (nttc) to A. A may deduct the receipts from the sale if a sales ticket is prepared identifying the property purchased, the name of the customer and the date and amount of the transaction.

(3) Example 3: M, a motor parts store, deducts receipts for sales made over the counter to cash customers who have delivered proper nttcs. A sales ticket is prepared by M indicating the date, the amount and the items purchased. "CASH" is written in the space provided for the customer's name. If M is audited, the deduction would be disallowed; the transaction could not be related to a specific nttc.

C. A taxpayer claiming the deduction under Section 7-9-47 NMSA 1978 has the burden of proving that the sale was in fact a nontaxable sale for resale. If the sale was made to a person who was an active registered retailer or wholesaler at the time of the sale and the property purchased was of the type or types ordinarily purchased for resale by that purchaser, the presumption that the deduction of the receipts from the sale should be disallowed can be overcome during an audit or upon reconsideration. A taxpayer claiming a deduction pursuant to Section 7-9-47 NMSA 1978 who is unable to provide a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978 will be allowed to submit other evidence, as specified in Subsection F of this section. Such other evidence is meant to provide the department with sufficient information to verify that the deduction under Section 7-9-47 NMSA 1978 is appropriate and will only be accepted if the conditions of Subsection E of Section 7-9-43 NMSA 1978 are met.

D. For purposes of Subsection C of this section, "unable to provide a nttc" means the inability to obtain a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978 because:

(1) the buyer of the property is no longer engaged in business in New Mexico;

(2) the buyer was authorized by the department to execute nttcs at the time of the transaction but the authority to obtain or issue nttcs has been suspended by the department because the buyer is not in compliance with the department for the payment of their taxes;

(3) an act of God caused physical damage to the taxpayer's records or place of business; or

(4) there are other circumstances that reasonably justify a determination that the taxpayer is unable to provide a nttc.

E. The following are examples of when a taxpayer would be "unable to provide a nttc" as that phrase is used in Subsection C of this section:

(1) Example 1: X, a New Mexico retailer, sells tangible personal property to Y, another small retailer located in a rural part of New Mexico. Y purchases the tangible personal property with the intent of reselling it in the ordinary course of business but fails to provide X with the proper nttc to support the resale deduction. Two years later X is selected for an audit by the taxation and revenue department. At the beginning of the audit, X is given a sixty-day letter that requires X to obtain all necessary nttcs to support any deductions taken during the periods being audited. X attempts to obtain an nttc from Y, but is unable to do so because Y is no longer in business in New Mexico. If X can show that Y is no longer in business, X will be considered unable to provide a nttc within the sixty-day period.

(2) Example 2: L, a small

lighting company, receives a notice that an audit is to be conducted by the department. L has been instructed to have in its possession all nttcs that support any deductions for the period in questions within sixty days. While compiling the documentation requested by the department, L realizes it does not have the proper nttc for a number of transactions with D, a retail customer. L calls D to obtain the proper nttc but is told by D that the department will not issue nttcs to D because D has an outstanding tax liability and that it is not in compliance. Because D's ability to execute an nttc has been suspended, the department will consider L as being unable to provide a nttc within the sixty-day period specified in Subsection A of Section 7-9-43 NMSA 1978.

F. A taxpayer who is unable to provide a nttc, as provided in Subsection D and E of this section, can provide the department with other evidence, pursuant to the requirements of this section, that will provide the department with sufficient information to verify that the deduction under Section 7-9-47 NMSA 1978 is appropriate. Such other evidence must include one of the following:

(1) information identifying the buyer (i.e., name, address, identification number, etc.) that can be used to verify against department records that the buyer is no longer engaged in business and that the deduction under Section 7-9-47 is appropriate;

(2) a letter sent to the buyer inquiring as to the buyer's disposition of the property purchased from the seller; the letter shall include the following information:

(a) seller's name and combined reporting system (CRS) identification number;

(b) date of invoice(s) or date of transaction(s);

(c) invoice number(s) (copies of actual invoices may be attached);

(d) copies of purchase order(s), if available;

(e) amount of purchase(s);

(f) a description of the property purchased or other identifying information; and

(g) a section completed and signed by the buyer that includes:

(i) the buyer's name, combined reporting system (CRS) identification number, and printed name;

(ii) title of the signor;

(iii) a statement as to the nature of the purchase; and

(iv) a statement of the buyer or signor indicating that the buyer sold or intends to resell the tangible personal property purchased from the seller, either by itself or in combination with other tangible personal property in the ordinary course of business; or

(3) any other documentary evidence that has been approved by the department in writing prior to any assessment of tax or a protest that has been acknowledged by the department prior to December 31, 2011.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96, 9/30/98; 3.2.201.10 NMAC - Rn, 3 NMAC 2.43.1.10, 5/31/01; A, XXX]

3.2.205.8 **DELIVERY OF THE NONTAXABLE TRANSACTION CERTIFICATE:**

A. In order for a taxpayer to qualify for the deduction provided in Section 7-9-47 NMSA 1978 the taxpayer must meet the requirements of Section 7-9-47 NMSA 1978, which include being the recipient of a nontaxable transaction certificate (nttc) of the type specified and furnished by the department to be delivered by a buyer who resells tangible personal property in the ordinary course of business. Other evidence in lieu of an appropriate nttc may be acceptable as provided in Section 7-9-43 NMSA 1978 and 3.2.201.8 NMAC.

B. Example: X, a retail grocer, buys $150 worth of brooms from Y. X, however, will not give Y an nttc. The sale from Y to X is a taxable transaction since X did not give Y an nttc. If X had presented the certificate, Y could have deducted the proceeds of the sale from Y's gross receipts.

[9/29/67, 12/5/69, 3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.205.8 NMAC - Rn, 3 NMAC 2.47.8 & A, 5/31/01; A, XXX]

End of Notices and Proposed Rules Section

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Adopted Rules

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.100 NMAC, amending Sections 2, 3, 5, 6, 7, 9, 10 and 11; repealing Sections 13, 20, 22, 23, 25 and 28; renumbering Sections 12, 14 through 19, 21, 24, 26 and 27; and adding Sections 12, 13, 14, 16, 22, 23, 25, 27, 28, 29 and 31 through 34, effective January 1, 2012.

20.11.100.2 SCOPE:

A. Applicability (vehicles to be inspected):

(1) **Motor vehicles.** All motor vehicles, as defined in 20.11.100.7 NMAC, shall be inspected for compliance with the requirements of [~~this part~~] 20.11.100 NMAC unless otherwise exempted. A vehicle shall not be registered or re-registered until the vehicle has passed the applicable on-board diagnostics (OBDII) inspection, exhaust emissions inspection, tampering inspection, pressurized gas cap test and visible emissions inspection prescribed by [~~20.11.100.14~~] 20.11.100.17 NMAC or the program has issued a time extension for repairs of the vehicle, unavailability for testing, or reciprocity for a test from another state.

[~~B.~~] (2) **Commuter vehicles:** All motor vehicles [~~, which~~] that are more than four years old and are driven into, operated, or are otherwise present in Bernalillo county for 60 or more days per year but are registered in another county or state [~~must~~] shall comply with [~~this part~~] 20.11.100 NMAC.

[~~C.~~] (3) **Federal installations:** Vehicles[~~, which~~] that are operated on federal installations located in Bernalillo county, shall comply with [~~this part~~] 20.11.100 NMAC, whether or not the vehicles are registered in New Mexico or Bernalillo county. The inspection requirement applies to all employee owned or leased vehicles as well as agency operated vehicles. The inspection requirements for federal installations are mandated by 40 CFR Part 51.356(a)(4).

[~~D.~~] (4) **Fleet vehicles:** Fleet vehicles[~~, which~~] that are registered outside of Bernalillo county but are primarily operated in Bernalillo county shall comply with [~~this part~~] 20.11.100 NMAC. The inspection requirements for fleet vehicles are mandated by 40 CFR Part 51.356(a)(2).

[~~E.~~] (5) **Municipalities and counties:** If the program enters into a joint powers agreement with a municipality or county to extend the enforcement of [~~this part~~] 20.11.100 NMAC, all vehicles registered in that municipality or county [~~must~~] shall comply with [~~this part~~] 20.11.100 NMAC.

B. Exempt vehicles:

(1) all new motor vehicles for four years following initial registration from the date of the manufacturer's certificate of origin (MCO);

(2) vehicles that are fueled by a mixture of gasoline and oil for purposes of lubrication;

(3) motor vehicles that are used for legally sanctioned competition and not operated on public streets and highways;

(4) implements of husbandry, or road machinery not regularly operated on public streets and highways;

(5) other vehicles that are not regularly operated on public streets and highways after providing satisfactory proof to the program manager;

(6) vehicles leased by a leasing company whose place of business is Bernalillo county to a person who resides outside of Bernalillo county; however, an exemption shall not be granted if the person resides in an area, that has an EPA-required vehicle inspection program;

(7) vehicles that are 35 years old or older;

(8) vehicles sold between licensed dealers;

(9) vehicles with a GVW of 10,001 lbs or more; and

(10) dedicated electric vehicles;

(11) existing electric hybrid vehicles which were exempted from 20.11.100 NMAC as of the effective date of 20.11.100.2 NMAC, until such time that a change of ownership of the vehicle occurs.

[5/20/88. . .12/1/95; 20.11.100.2 NMAC - Rn, 20 NMAC 11.100.I.2, 10/1/02; A, 5/1/04; A, 9/1/04; A, 1/1/12]

20.11.100.3 STATUTORY AUTHORITY: [~~This part~~] 20.11.100 NMAC is adopted pursuant to the, authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 and 4; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4; and the City of Albuquerque and Bernalillo County Motor Vehicle Emissions Control Ordinances. It is adopted in order to comply with the Federal Clean Air Act Amendments of 1990 and 40 CFR Part 51, [~~which are the environmental protection agency inspection/maintenance requirements~~] Subpart S, *Inspection/Maintenance Program Requirements*.

[10/19/82. . .12/1/95; 20.11.100.3 NMAC - Rn, 20 NMAC 11.100.I.3, 10/1/02; A, 9/1/04; A, 1/1/12]

20.11.100.5 EFFECTIVE DATE:

A. [~~Effective~~] December 1, 1995, unless a later date is cited at the end of a section. If no EPA-confirmed violation (two exceedances) of the federal ambient carbon monoxide standards has occurred within Bernalillo county, the vehicle inspection frequency shall be biennial. [~~Until the later of June 13, 2006, or when the SIP revision, "*second half of the carbon monoxide maintenance plan for Bernalillo county*", is effective following EPA approval, if EPA confirms a violation of the federal ambient carbon monoxide standards, then, 120 days after the violation is confirmed by the EPA, the program shall require annual testing of vehicles and the program will be upgraded to meet the performance standards established in 40 CFR Part 51. Beginning on the later of June 13, 2006, or when the SIP revision, "*second half of the carbon monoxide maintenance plan for Bernalillo county*" is effective following EPA approval, if no EPA-confirmed violation of the federal ambient carbon monoxide standards has occurred, the vehicle inspection frequency shall be biennial.~~]

B. Beginning January 1 of the first year following the federally effective date for the 2011 revised ozone standard, or January 1, 2013, whichever is earlier, all 1998 and newer diesel motor vehicles must pass an on-board diagnostic test pursuant to Paragraph (2) of Subsection E of 20.11.100.17 NMAC.

[8/25/92. . .12/1/95; 20.11.100.5 NMAC - Rn, 20 NMAC 11.100.I.5, & A, 10/1/02; A, 9/1/04; A, 1/1/12]

20.11.100.6 OBJECTIVE: To provide for the control and regulation of carbon monoxide (CO), hydrocarbon (HC), ozone precursors and particulate emissions above certain levels from motor vehicles, and for anti-tampering inspections.

[10/19/82. . .12/1/95; 20.11.100.6 NMAC - Rn, 20 NMAC 11.100.I.6, 10/1/02; A, 5/1/04; A, 9/1/04; A, 1/1/12]

20.11.100.7 DEFINITIONS: In addition to the definitions in 20.11.100.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in [~~this part~~] 20.11.100 NMAC shall govern.

A. *"Air care* inspection station" means a private business authorized by a certificate in accordance with [~~20.11.100.18~~] 20.11.100.21 NMAC to

inspect motor vehicles and issue certificates of inspection. It also means stations established by the city of Albuquerque and Bernalillo county, or other governmental entities, for testing government owned or leased motor vehicles.

B. "*Air care* inspector" means an individual authorized by a certificate issued by the program to perform inspections of motor vehicles and who has met the requirements of [~~20.11.100.21~~] 20.11.100.26 NMAC.

C. "*Air care* station" means [~~both~~] an *air care* inspection station, [~~and~~] or a fleet *air care* station.

D. [~~Reserved~~] "**Audit"** means an assessment by VPMD, either as a physical on-site visit or an off-site review of data collected electronically, designed to determine whether *air care* inspectors and *air care* stations are correctly performing all tests and other functions required by the VPMD program. Physical on-site audits shall be of two types: overt and covert.

E. "Biennial" means every other year.

F. "Chassis" means the complete motor vehicle, including standard factory equipment, [~~exclusive of~~] but excluding the body and cab.

G. "City" means the city of Albuquerque, a New Mexico municipal corporation.

H. "**Clean piping**" means the illegal act of an *air care* station or *air care* inspector that results in a fraudulent "pass" for a vehicle's tailpipe emissions test by entering into the emissions analyzer unique information identifying the vehicle being tested, but then performing the tailpipe test on a different vehicle, which bypasses actual testing of the first vehicle.

I. "Clean scanning" means the illegal act of an *air care* station or *air care* inspector that results in a fraudulent "pass" for a vehicle's emissions test by entering into the emissions analyzer unique information identifying the vehicle being tested, but then performing the emissions test on a different vehicle ,which bypasses actual testing of the first vehicle**.**

[~~H.~~] J. "County" means the county of Bernalillo, a political subdivision of the state of New Mexico.

K. "Covert audit" means a quality assurance site visit by an anonymous agent delegated by VPMD to drive a vehicle into the selected station and asked to have the vehicle tested. The vehicle may be set up by VPMD in a tampered or failed condition. Covert audits are required by EPA to ensure that air care stations and air care inspectors are performing the emissions test correctly.

L. "**Covert surveillance**" means a quality assurance audit by observation done from an off-site location near the *air care* station, often using binoculars to monitor the actions of an *air care* inspector performing emissions testing.

[~~I.~~] M. "Dealer" means any person who sells or solicits or advertises the sale of new or used motor vehicles subject to registration in the state of New Mexico and as further defined in the Motor Vehicle Code Chapter 66, NMSA 1978.

[~~J.~~] N. "Distributor" means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer.

[~~K.~~] O. "Division" or "VPMD" means the vehicle pollution management division of the city environmental health department, which provides the staff for the Albuquerque-Bernalillo county vehicle pollution management program.

[~~L.~~] P. "Driver" means every person who drives or is in actual physical control of a motor vehicle upon a highway or upon property used for inspections.

Q. "**Emissions analyzer**" means a device for measuring the concentration of certain exhaust gases emitted by a motor vehicle.

R. "Emissions inspection system" or "EIS" means the equipment and software for conducting the official emissions inspection.

[~~M.~~] S. "Essential parts" means all integral and body parts of a vehicle of a type required to be registered under the Motor Vehicle Code, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model type or mode of operation.

[~~N.~~] T. "Exhaust emissions" means CO, HC and all other substances emitted through a motor vehicle's exhaust system, after passing downstream of the engine block exhaust ports and exhaust emissions control devices, if any.

[~~O.~~] U. "Exhaust [~~emission~~] emissions control device" means equipment designed by the manufacturer of the vehicle and installed on a motor vehicle for the purpose of reducing pollutants emitted from the vehicle, or a system or engine modification designed by the manufacturer of the motor vehicle [~~which~~] that causes a reduction of pollutants emitted from the vehicle, or equipment designed by the vehicle manufacturer to prevent damage to or tampering with other exhaust [~~emission~~] emissions control devices.

[~~P.~~] V. "Fast idle condition or unloaded 2,500 rpm" means an exhaust emissions inspection conducted with the engine of the vehicle running under an accelerated condition as required by 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program Requirements.*

[~~Q.~~] W. "Field audit gas" means a gas mixture with known concentrations of CO_2, CO, and HC that is used by the program to check the accuracy of exhaust gas analyzers used by authorized inspection stations.

X. "Fleet" means a group of vehicles under the common ownership or control of a commercial or governmental entity.

[~~R.~~] Y. "Fleet *air care* station" means any person, business, government entity, firm, partnership or corporation [~~which~~] that provides for the construction, equipping, maintaining, staffing, managing and operation of authorized inspection station for the sole purpose of inspecting its private fleet of motor vehicles subject to [~~this part~~] 20.11.100 NMAC, and not offering inspection services to its employees or the general public.

[~~S.~~] Z. "Fuel" means any material that is burned by the engine of a vehicle in order to propel the vehicle.

AA. "**Gas cap test**" means the determination of the ability of the gas cap(s) to retain pressure.

[~~T.~~] BB. "Gross vehicle weight" means the weight of a vehicle without load, plus the weight of any load thereon.

[~~U.~~] CC. "Government vehicle" means a motor vehicle exempt from the payment of a registration fee and owned or leased by any federal, state, local, or other governmental entity.

[~~V.~~] DD. "Headquarters" means the main office of the vehicle pollution management program.

[~~W.~~] EE. "Highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

[~~X.~~] FF. "Idle mode test" means an unloaded exhaust emissions test conducted only at the idle condition[~~, as described in the VPMP *procedures manual*~~].

[~~Y.~~] GG. "Inspection or re-inspection or test" means the mandatory vehicular anti-tampering and emissions inspection conducted both visually and with equipment or chemical sensing devices as required by [~~this Part~~] 20.11.100 NMAC.

[~~Z.~~] HH. "Low emissions tune-up" means adjustments and repairs[~~, which~~] that can reduce motor vehicle emissions, including but not limited to the following procedures:

(1) checking and setting to manufacturer's specifications, the idle mixture, idle speed, ignition timing and dwell; [~~and~~]

(2) checking for proper connection of vacuum lines, electrical wires, and for proper operation of pollution control devices; [~~and~~]

(3) checking and replacement of air breathing filters and positive crankcase

ventilation valve as necessary; [and]

(4) replacement of spark plugs, points, and wires; and

(5) for all motor vehicles equipped with computer controlled closed-loop feedback exhaust [emission] emissions control devices and systems, inspecting the operation of the [emission] emissions control system according to the motor vehicle manufacturer's specified procedures, including hose routing and on-board diagnostics, new vehicle warranty and repair or replacement as necessary.

[AA.] II. "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered under the laws of the state of New Mexico.

[BB.] JJ. "Manufacturer's certificate of origin" or "MCO" means a certification, on a form supplied by or approved by the MVD, signed by the manufacturer, stating that the new vehicle described therein has been transferred to the New Mexico dealer or distributor named therein or to a dealer duly licensed or recognized as [such] a dealer or distributor in another state, territory or possession of the United States, and that [such] the transfer is the first transfer of [such] the vehicle in ordinary trade and commerce. Every [such certificate] MCO contains a space for proper reassignment to a New Mexico dealer or to a dealer duly licensed or recognized as [such] a dealer or distributor in another state, territory or possession of the United States. The certificate also contains a description of the vehicle, the number of cylinders, type of body, engine number and the serial number or other standard identification number provided by the manufacturer of the vehicle, [where such] if the information exists.

[CC.] KK. "Model year" means the year of manufacture of the vehicle based on the annual production period of the vehicle as designated by the manufacturer and indicated on the title and registration of the vehicle. If the manufacturer does not designate a production period for the vehicle, then the model year means the calendar year of manufacture.

[DD.] LL. "Motor vehicle" means any vehicle [which] that:

(1) is propelled by a spark or compression ignition, internal combustion engine; [and]

(2) has four or more wheels in contact with the ground; [and]

(3) is subject to registration with the MVD to an owner of record who is domiciled within Bernalillo county, or is a government vehicle which is assigned to a governmental unit within Bernalillo county; [and]

(4) has a GVW greater than 1,000 and less than 10,001 pounds; [and]

(5) is for use upon public roads and highways; [and]

(6) is a 1975 model year or newer; and

(7) is a vehicle not otherwise exempted by [this part] 20.11.100 NMAC.

[EE.] MM. "New motor vehicle" is a vehicle[, which] that has undergone a transfer of ownership and is being registered for the first time to any person, [except in] but does not include the sale to another licensed motor vehicle dealer for the purpose of resale as a new vehicle.

[FF.] NN. "Operator" means driver, as defined in [this part] 20.11.100 NMAC.

OO. "Overt audit" means an on-site quality assurance assessment of the performance of an *air care* station or an *air care* inspector, conducted by VPMD personnel. An overt audit may also be an assessment of an *air care* station's emissions analyzer to ensure that the equipment is maintained appropriately and operating correctly.

[GG.] PP. "Owner" means a person who holds the legal title of the motor vehicle or, [in the event a] if the vehicle is the subject of an agreement for conditional sale or lease [thereof] with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then [such] "owner" means the conditional vendee, [or] lessee or mortgagor.

[HH.] QQ. "Pass fail criteria" means [those] the standards [set] established by [this part which] 20.11.100 NMAC that specify the maximum allowable motor vehicle exhaust emissions under appropriate specified operating conditions.

[II.] RR. "Person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or legal representative, agent or assign.

SS. "Pretesting" means the determination by an *air care* station or inspector, of the "pass" or "fail" status of a vehicle and providing the information to the vehicle owner prior to performing the required complete emissions test.

[JJ.] TT. "Program" or [VPM] "VPMD program" means the Albuquerque - Bernalillo county vehicle pollution management program.

[KK.] UU. "Program manager" means a classified city employee selected in accordance with provisions of the joint powers agreement between the city and the county to perform for the joint air quality control board [those] the duties required to enforce and administer the provisions of [this part] 20.11.100 NMAC, or the program manager's designee.

[LL.] VV. "Reconstructed vehicle" means [any] a vehicle [which shall have been] that was assembled or constructed largely [by means] from of essential parts, new or used, derived from other vehicles or makes of vehicles of various names, models and types or [which,] that, if originally otherwise constructed, [shall have been] was materially altered by the removal of essential parts, new or used, derived from other vehicles or makes of vehicles.

[MM.] WW. "Registration and re-registration" means both original registration and renewal of motor [vehicles] vehicle registration as provided in the New Mexico Motor Vehicle Code, Chapter 66 NMSA 1978.

[**NN. "Shall be inspected"** means the vehicle shall be subjected to testing and inspection as applicable to model year and weight classification and shall satisfy the criteria of this part as evidenced by the issuance of a certificate of inspection.]

[OO.] XX. "Standard gases" means NIST certified emissions samples of gases maintained as primary standards for determining the composition of working gases, field audit gases, or the accuracy of analyzers.

[PP.] YY. "Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property. In addition, all vehicles with a GVW greater than 6,000 pounds shall be considered a truck.

[**QQ. "VEGAS"** means a program-certified, garage-type, computer controlled NDIR vehicle exhaust gas analyzer system which is capable of performing a preconditioned two-speed idle test on-board diagnostic test, and pressurized gas cap test on vehicles as required by 40 CFR Part 51 appendix B to Subpart S and meets or exceeds the specifications adopted by the program.]

ZZ. "Vehicle information database" or "VID" means a database consisting of data collected from each official inspection as specified in the EIS.

[RR.] AAA. "VIR" means vehicle inspection report, a program-certified document (VIR) signed by a certified *air care* inspector or other program authorized official stating that the vehicle described therein is either in compliance (pass), not in compliance (fail), or has an approved time extension in order to achieve compliance through additional repairs or adjustments (time-limit extension).

[SS.] BBB. "Visible emissions" means any fume, smoke, particulate matter, vapor or gas, or combination thereof, [except] excluding water vapor or steam.

[TT.] CCC. ["VPMP *procedures manual*" or "procedures

~~**manual"** means a compilation of procedures developed by the program manager pursuant to 20.11.100.12 NMAC~~] [Reserved]

[~~UU.~~] DDD. [~~"Wholesale"~~ ~~means either any person selling or offering for sale vehicles of a type subject to registration in New Mexico to a vehicle dealer licensed under the Motor Vehicle Code, Chapter 66, NMSA 1978, or any person who is franchised by a manufacturer, distributor or vehicle dealer to sell or promote the sale of vehicles dealt in by such manufacturer, distributor or vehicle dealer, but does not include the act of selling a vehicle at retail as a dealer subject to the dealer-licensing provisions of the Motor Vehicle Code.~~] RESERVED

[~~VV.~~] EEE. "Working gases" means program-approved span gases maintained by an authorized *air care* inspection station to perform periodic calibration of approved exhaust gas analyzers.

[~~WW.~~] FFF. Abbreviations and symbols

(1) **A/F** means air/fuel.

(2) **ASE** means the national institute for automotive service excellence.

(3) **CO** means carbon monoxide.

(4) **CO_2** means carbon dioxide.

(5) **DTC** means diagnostic trouble code.

(6) **EHD** means the environmental health department.

(7) **EIS** means the emissions inspection system.

[~~(7)~~](8) **EPA** means the environmental protection agency.

[~~(8)~~](9) **GVW** means gross vehicle weight.

[~~(9)~~](10) **HC** means hydrocarbon.

[~~(10)~~](11) **HP** means horsepower.

[~~(11)~~](12) **LNG** means liquefied natural gas.

[~~(12)~~](13) **LPG** means liquefied petroleum gas.

[~~(13)~~](14) **MPH** means miles per hour.

[~~(14)~~](15) **MCO** means manufacturer's certificate of origin.

[~~(15)~~](16) **MVD** means the motor vehicle division of the New Mexico taxation and revenue department.

[~~(16)~~](17) **NDIR** means non-dispersive infrared.

[~~(17)~~](18) **NIST** means national institute of standards and technology.

[~~(18)~~](19) **OBDII** means a vehicle's on-board diagnostics second generation.

[~~(19)~~](20) **%** means percent.

[~~(20)~~](21) **PCV** means positive crankcase ventilation.

[~~(21)~~](22) **ppm** means parts per million by volume.

(23) **VID** means the vehicle information database.

[~~(22)~~](24) **VIN** means vehicle identification number.

[~~(23) **40 CFR Part 51** means the EPA regulations for inspection/maintenance programs published in the federal register on November 5, 1992 and mandated by the Federal Clean Air Act Amendments of 1990.~~]

[10/12/82. . .5/20/88, 11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.7 NMAC - Rn, 20 NMAC 11.100.I.7, 10/1/02; A, 5/1/04; A, 9/1/04; A, 1/1/12]

20.11.100.9 SAVINGS CLAUSE: Any amendment of 20.11.100 NMAC[~~, which,~~] that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, [~~Air Quality Control Board Regulation 28, the procedures manual~~] or 20.11.100 NMAC. Prosecution for a prior violation shall be governed and prosecuted under the statute, ordinance, regulation, or part [~~or procedures manual~~] in effect at the time the violation was committed.

[9/23/94. . .12/1/95; 20.11.100.9 NMAC - Rn, 20 NMAC 11.100.I.9, 10/1/02; A, 1/1/12]

20.11.100.10 SEVERABILITY: If any section, paragraph, sentence, clause or word of [~~this part~~] 20.11.100 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, [~~such~~] the decision shall not affect the validity of remaining provisions of [~~this part~~] 20.11.100 NMAC [~~or the procedures manual~~].

[9/23/94. . .12/1/95; 20.11.100.10 NMAC - Rn, 20 NMAC 11.100.I.10, 10/1/02; A, 1/1/12]

20.11.100.11 DOCUMENTS: Documents incorporated and cited in [~~this part~~] 20.11.100 NMAC may be viewed at the vehicle pollution management program headquarters, 1500 Broadway NE, Albuquerque, NM 87102.

[12/1/95; 20.11.100.11 NMAC - Rn, 20 NMAC 11.100.I.11, 10/1/02; A, 1/1/12]

20.11.100.12 VEHICLE POLLUTION MANAGEMENT DIVISION:

A. The vehicle pollution management division or its successor agency is part of the city of Albuquerque environmental health department.

B. The division manager shall establish and maintain a VPMD headquarters, which will include an emissions inspection facility equipped with certified emissions testing equipment and employing at least two ASE certified technicians.

C. The facility shall be operated by the city to provide services to the public and to facilitate program responsibilities and administer the provisions of 20.11.100 NMAC.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95, 8/1/97; 20.11.100.12 NMAC - Rn, 20 NMAC 11.100.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.100.II.1, 10/1/02; A, 5/1/04; 20.11.100.12 NMAC - N, 1/1/12]

20.11.100.13 RESPONSIBILITIES OF VEHICLE POLLUTION MANAGEMENT DIVISION: VPMD shall be responsible for administering a program that ensures that federal motor vehicle emissions standards are met. In order to be successful in meeting federal goals and criteria for a motor vehicle emissions testing program, VPMD is authorized to take any actions commonly known to be necessary for a motor vehicle emissions testing program, now and in the future, including, at a minimum:

A. developing and approving specifications for gas analyzers in a manner consistent with improvements in the industry;

B. maintaining databases including the VID, certified *air care* inspectors' information and history, and extensions/exemptions from official inspections;

C. providing training and certification processes for *air care* station and *air care* inspectors;

D. performing quality assurance audits as required by 20.11.100.30 NMAC, assessing the level of compliance of each *air care* station or *air care* inspector by using onsite audits and by monitoring the information provided by the VID;

E. enforcing the certification and recertification requirements of *air care* inspectors;

F. taking enforcement actions as appropriate and providing for penalty assessment;

G. investigating and maintaining records regarding complaints against certified *air care* stations and certified *air care* inspectors;

H. providing for non-binding mediation of disputes arising from inspection activities by certified *air care* stations or certified *air care* inspectors, including if necessary, a verification test at no cost to the person requesting the test; and

I. evaluating and issuing compliance time extensions for vehicles unable to pass the inspection test criteria as provided by 20.11.100 NMAC.

[5/20/88. . .9/23/94, 12/1/95, 20.11.100.13 NMAC - Rn, 20 NMAC 11.100.II.2, 10/1/02; A, 5/1/04; 20.11.100.13 NMAC - N 1/1/12]

20.11.100.14 SHEDULING OF INSPECTIONS:

A. Inspection and registration: Every motor vehicle, as

defined in 20.11.100.7 NMAC, shall be inspected biennially unless it is determined to emit quantities of CO or HC between 75% and 100% of its maximum allowable standard listed in Table I of Subsection A of 20.11.100.17 NMAC, in which case it shall be issued a provisional pass certificate good only for a one year registration and shall be required to be inspected again the following year prior to registration. The MVD shall distribute notices or other appropriate information to owners of vehicles applying for re-registration in accordance with the written agreement between the MVD and the program manager. Vehicles shall also be inspected when sold and when titles are transferred. A person who believes he has a vehicle for which he has been erroneously notified of inspection may petition the program manager to correct the error.

B. Vehicles unavailable for inspection: Motor vehicles that are unavailable for inspection may be granted an extension of inspection if authorized by the program manager. Persons seeking an extension may petition the program manager by submitting a signed affidavit justifying the special need and by providing other necessary documentation as required by the program manager.

C. Federal, state and local government vehicles:

(1) Each motor vehicle operated in Bernalillo county that is owned or leased by the United States government, the state of New Mexico or any local government entity shall be inspected biennially.

(2) Scheduling vehicles for inspection pursuant to an agreement with the program manager shall be the responsibility of the governmental authority that owns or leases the vehicles. The schedules shall only be approved if the program manager determines that they are consistent with the scope and goals of 20.11.100 NMAC.

(3) Persons who are responsible for government fleet vehicles or motor pools shall update the vehicle inventory annually each January and forward the resulting inspection plan with fleet inventory to the program manager in a format approved by the program manager.

(4) Failure to forward the inspection plan and fleet inventory to VPMD by March 31st of each year is a violation of 20.11.100 NMAC and of the Air Quality Control Act 74-2-1 NMSA 1978.

(5) The program manager may assess a civil penalty not to exceed fifteen thousand dollars ($15,000) for each day during any portion of which a violation occurs, pursuant to 74-2-12.1 NMSA 1978.

D. Private fleets issued permanent fleet plates:

(1) Each motor vehicle operated in Bernalillo county that is owned or leased by a private or non-governmental entity that has been issued a permanent fleet license plate shall be inspected biennially.

(2) Scheduling vehicles for inspection pursuant to an agreement with the program manager shall be the responsibility of the entity that owns or leases the vehicles. The schedules shall only be approved if the program manager determines that they are consistent with the scope and goals of 20.11.100 NMAC.

(3) Persons who are responsible for fleet vehicles or motor pools shall update the vehicle inventory annually each January and forward the resulting inspection plan with fleet inventory to the program manager in a format approved by the program manager.

(4) Failure to forward the inspection plan and fleet inventory to VPMD by March 31st of each year is a violation of 20.11.100 NMAC and of the Air Quality Control Act 74-2-1 NMSA 1978.

(5) The program manager may assess a civil penalty not to exceed fifteen thousand dollars ($15,000) for each day during any portion of which a violation occurs, pursuant to 74-2-12.1 NMSA 1978.

[10/19/82. . .5/20/88, 9/23/94, 12/1/95, 8/1/97, 20.11.100.14 NMAC - Rn, 20 NMAC 11.100.II.3, 10/1/02; A, 5/1/04; 20.11.100.14 NMAC - N, 1/1/12]

[~~20.11.100.12~~] 20.11.100.15 V E H I C L E INSPECTION PROCEDURES:

A. [~~VPMP *Procedures manual*:~~

~~(1) The program manager shall develop an official document entitled VPMP *procedures manual*, outlining in sufficient detail the procedures necessary for a certified *air care* station a certified *air care* inspector and a certified *air care* technician to comply with all applicable requirements of this part. Upon approval by the board, the program manager shall publish the official VPMP procedures manual and, within 10 days of publication, provide notice of its availability.~~]

~~(2) The procedures, details and specifications contained in the VPMP *procedures manual* will be a part of and incorporated into this part and shall be binding upon each *air care* inspection station, *air care* station owner/operator, *air care* inspector and *air care* technician.~~

~~(3) The *procedures manual* shall be amended as needed. Notice of amendments to the procedures manual shall be provided by the program manager, with copies made available to the users. It is the responsibility of each *air care* station owner operator to obtain and incorporate all amendments made available by the program manager. Each *air care* station shall maintain at least one current copy of the VPMP *procedures manual* at each *air care* inspection station.~~

~~(4) If a provision of the *procedures manual* conflicts with a provision of this part, the provision of this part will prevail.~~] [Reserved]

B. Vehicle tests:

(1) To determine if a motor vehicle is in compliance with [~~this part~~] 20.11.100 NMAC, all inspections shall be performed in strict accordance with [~~this part and the VPMP *procedures manual*~~] 20.11.100 NMAC. Each vehicle shall be inspected at an *air care* station by an *air care* inspector. All items shall be tested to completion with reports of outcomes provided to the motor vehicle owner.

(a) Vehicles with an engine other than the engine originally installed by the manufacturer or an identical replacement of [~~such an~~] the engine shall be subject to the inspection procedures and standards for the chassis type, GVW and model year of the vehicle.

(b) Assembled vehicles or kit cars shall meet the standards and [~~emission~~] emissions control equipment [~~as requirements~~] that are required for the year of the vehicle engine. If the vehicle is assembled with a pre-1975 engine, testing is not required, but the vehicle owner [~~must~~] shall petition the program manager for an exemption from [~~emission~~] emissions inspections.

(2) **Exhaust gas emissions measurements:** No emissions inspection required by [~~this part~~] 20.11.100 NMAC shall be performed unless the instrument used for measuring exhaust gases from the motor vehicle is an approved [~~VEGAS~~] emissions analyzer.

(a) **Vehicle operating condition:**

(i) Prior to this portion of the inspection, the entire vehicle shall be in normal operating condition as specified by the emissions tune-up label originally installed on the vehicle [~~or as specified in the VPMP *procedures manual*~~]. Motor vehicles equipped for simple selection of alternate fuel supplies (switching between gasoline and any compressed or liquefied gaseous fuel) shall be inspected using the fuel in use when presented for inspection.

(ii) [~~All 1975 - 1995 model year motor vehicles~~] Non-OBDII compatible vehicles (usually 1995 model year or older) subject to [~~this part~~] 20.11.100 NMAC shall be required to take and pass a preconditioned two-speed idle test as [~~outlined~~] specified in Appendix B to Subpart S of 40 CFR Part 51 [~~and the *VPMD procedures manual*~~]. The test procedure [~~will~~] shall include a first and second-chance test at both idle and at the unloaded 2,500 RPM test. If the vehicle passes both [~~emission~~] emissions tests, it shall be deemed in compliance with minimum emissions standards unless the vehicle fails the tampering inspection, pressurized gas cap test or visible emissions inspection required by [~~this part~~] 20.11.100 NMAC.

(iii) All 1996 and newer model year motor vehicles subject to [~~this part~~] 20.11.100 NMAC shall be required to take and pass an on-board diagnostic test, pressurized gas cap test and visible emissions inspection as [~~outlined~~] specified in 40 CFR Part 51 [~~and the *VPMD procedures manual*~~] , Subpart S, *Inspection/Maintenance Program Requirements*. Certain 1996 and newer model year motor vehicles [~~which~~] that are not OBDII compatible may be tested using the two-speed idle test as determined by the program manager.

(iv) No test shall commence if there are apparent leaks in the motor vehicle's exhaust system that will cause the exhaust analyzer to invalidate the test.

[~~(v) Pattern failure notices issued by EPA shall be maintained by the *air care* station and *air care* inspector in an up-to-date file for reference to unusual pretest conditioning.~~

~~(b) **Pretest:** Vehicles presented to an *air care* station for inspection shall not be pre-tested by having manual diagnostic emissions analysis or visual examination for tampering performed prior to the beginning of the inspection. This shall not prohibit diagnostic engine analysis service of vehicles when specifically presented for such, before emission testing.~~]

[~~(c)~~](b) **Exhaust emissions inspection:** The exhaust emissions inspection shall proceed as [~~specifically described~~] specified in 40 CFR Part 51 Appendix B to Subpart S [~~and the VPMP *procedures manual*~~].

[~~(d)~~](c) **Selection of appropriate pass/fail emissions inspection criteria:** The appropriate pass/fail criteria will be selected automatically by the approved [~~VEGAS~~] emissions analyzer.

(3) **Visual examination for tampering:** The certified *air care* inspector shall determine specifically what emissions control devices should be in place and operable for each [~~1975 - 1995 model year~~] vehicle inspected. Specific design and equipment elements necessary in anti-tampering determinations shall only include catalytic converter(s).

(4) **Visible emissions requirements:** In addition to exhaust and tampering requirements of [~~this part~~] 20.11.100 NMAC, all vehicles are subject to and must pass inspection for visible emissions (smoke). Non-diesel vehicles may not emit any visible emissions (except steam) during the test as [~~described~~] specified in [~~Paragraph (3), of Subsection A of 20.11.100.14 NMAC~~] Subsection C of 20.11.100.17 NMAC.

[11/13/91. . .8/25/92, 9/23/94, 12/1/95; 20.11.100.15 NMAC - Rn, 20 NMAC 11.100.II.4, 10/1/02; A, 5/1/04; 20.11.100.15 NMAC - Rn & A, 20.11.100.12 NMAC, 1/1/12]

[~~20.11.100.13 SCHEDULING OF INSPECTIONS:~~

~~**A. Inspection and registration:** Every motor vehicle, as defined in Section 20.11.100.7 NMAC, shall be inspected biennially when the owner is so notified or otherwise informed by MVD, unless the vehicle is a 1975-1985 model year motor vehicle in which case the inspection requirement shall be annual. Any 1986 - 1995 model year motor vehicle which is determined to emit quantities (rates) of CO and/or HC between 75% and 100% of any of its maximum allowable standards listed in Table I of Subsection A of 20.11.100.14 NMAC shall be issued a pass certificate good only for a one year registration and shall be required to be inspected again the following year prior to re-registration. The MVD will distribute notices or other appropriate information to owners of vehicles applying for re-registration in accordance with the written agreement made with the program manager. Vehicles shall also be inspected upon sale or when titles are transferred. Any person who believes he/she has a vehicle for which he/she has been erroneously notified of inspection may petition the program manager to correct such error.~~

~~**B. Vehicles unavailable for inspection:** Motor vehicles, which are unavailable for inspection, may be granted an extension of inspection if authorized by the program manager. Persons seeking such extension may petition the program manager by submitting a signed affidavit justifying the special need and by providing other necessary documentation as required by the program manager.~~

~~**C. Federal, state and local government vehicles:**~~

~~(1) Each motor vehicle operated in Bernalillo county which is owned or leased by the United States government, the state of New Mexico or any local government entity shall be inspected biennially.~~

~~(2) Scheduling vehicles under this subsection shall be established by the responsible governmental authority pursuant to an agreement with the program manager. Such schedules shall only be approved if the program manager determines that they are consistent with the scope and goals of this part.~~

~~(3) Persons who are responsible for such government fleet vehicles or motor pools shall periodically, but not less than annually, update the vehicle inventory and forward the resulting inspection plan with inventory to the program manager.~~]

[5/20/88. . .9/23/94, 12/1/95, 20.11.100.13 NMAC - Rn, 20 NMAC 11.100.II.2, 10/1/02; A, 5/1/04; Repealed, 1/1/12]

20.11.100.16 ACTIONS PROHIBITED DURING VEHICLE INSPECTION:

A. Each certified *air care* station or certified *air care* inspector shall inspect each vehicle in its as–presented condition, regardless of whether the *air care* inspector knows or believes that the vehicle will not pass.

B. Each certified *air care* station or certified *air care* inspector shall inspect each vehicle according to 20.11.100 NMAC and is prohibited from taking any of the following actions:

(1) engaging in conduct that constitutes fraud, deceit, or gross negligence;

(2) negligently providing incorrect or misleading information to the public regarding the requirements of 20.11.100 NMAC;

(3) failing or refusing to give a motorist the customer copy of the emissions test;

(4) failing to follow the inspection procedures specified by the vehicle manufacturer or required by 20.11.100 NMAC;

(5) making false promises likely to influence, persuade or induce a motorist to authorize the repair, service or maintenance of a motor vehicle;

(6) entering false data into an emissions analyzer;

(7) performing or allowing a repair that is represented to the motorist as being required to remedy the cause of an inspection failure or obtain a certificate of inspection when the repair is not required;

(8) adjusting or modifying a vehicle in a manner that would cause the vehicle to fail an inspection;

(9) charging for and performing an inspection that is represented to the motorist as being required when it is not required;

(10) failing to maintain the confidentiality of an inspector's access code for the emissions analyzer;

(11) failing to advise VPMD of any change in information provided in the inspector's or station's application for certification or for renewal of certification;

(12) failing to report to VPMD any illegal certification or other violation of 20.11.100 NMAC; or

(13) performing any type of clean scanning, clean piping or pretesting.

C. Performing any act or actions prohibited by Subsection B of 20.11.100.18 NMAC is a violation of 20.11.100 NMAC and may result in an enforcement action by VPMD.

D. It is the responsibility of each *air care* station owner or operator to ensure that all *air care* inspectors in his employment does not engage in prohibited act or actions in preparation for or during a vehicle inspection. VPMD may take an enforcement action against the *air care*

station owner or operator employing *air care* inspectors who engage in prohibited act or actions.
[10/19/82. . .12/1/95; 20.11.100.16 NMAC - Rn, 20 NMAC 11.100.II.5, 10/1/02; A, 5/1/04; 20.11.100.16 NMAC - N, 1/1/12]

[~~20.11.100.14~~] 20.11.100.17 VEHICLE INSPECTION CRITERIA: Failure to pass any one of the applicable criteria specified below in Subsections A, B, C, D and E of [~~Section 20.11.100.14 NMAC~~] 20.11.100.17 NMAC, entitled *exhaust emissions*, *anti-tampering*, *visible emissions*, *gas cap*, and *on-board diagnostics* respectively, shall constitute noncompliance with [~~this part~~] 20.11.100 NMAC and a fail VIR shall be issued.

A. Exhaust emissions:

[~~(1) Any~~] Every motor vehicle [~~which~~] that is determined to emit quantities (rates) of CO and HC greater than those listed in Table I appropriate to model year and weight classification listed shall be *failed*. [~~and those~~] Every motor vehicle with [~~emission~~] emissions rates equal to or lower than the applicable amounts shall be *passed* under subsection A of [~~20.11.100.14 NMAC~~] 20.11.100.17 NMAC.

TABLE I

Maximum Allowable Exhaust Emissions

Vehicle Model Year	Gross Vehicle Weight Rating (pounds)	Group Code	Unloaded			
			Idle Mode		2,500 RPM Test	
			HC PPM	CO %	HC PPM	CO %
1975 1978	0 to 6,000	C/T	500	5.0	500	5.0
1979 1980	0 to 6,000	C/T	400	4.0	400	4.0
1981 1985	0 to 6,000	C/T	220	1.2	220	1.2
1986 1990	0 to 6,000	C/T	200	1.2	200	1.2
1991 1995	0 to 6,000	C/T	180	1.2	180	1.2
1975 1978	6,001 to 8,000	LT	600	6.0	600	6.0
1979 1980	6,001 to 8,000	LT	600	4.5	600	4.5
1981 1982	6,001 to 8,500	LT	400	2.7	400	3.0
1983 1988	6,001 to 8,500	LT	300	1.2	300	3.0
1989 1995	6,001 to 8,500	LT	220	1.2	220	1.2
1975 1980	8,001 to 10,000	MT	650	6.5	650	6.5
1981 1990	8,501 to 10,000	MT	400	4.0	400	3.0
1991 1995	8,501 to 10,000	MT	220	2.0	220	2.0

[~~Note: These criteria will be reviewed by the board annually pursuant to the urban implementation plan for Albuquerque-Bernalillo county. Adjustments will be promulgated as appropriate.~~]

B. Anti-tampering:

(1) All [~~1975 - 1995 model year~~] motor vehicles subject to [~~this part~~] 20.11.100 NMAC shall be inspected for the presence [~~and proper connections~~] of a catalytic converter(s) that is properly connected.

(2) Any vehicle with **[**~~such~~] required features or components removed or rendered inoperative shall be *failed* [~~under this subsection~~].

If no tampering [~~is evident~~] with [~~these~~] required components or systems is evident, this portion of the inspection shall be *passed*.

(3) Vehicles [~~which~~] that have had the original engine removed and replaced with a newer [~~and/or~~] or inherently cleaner technology engine (including the [~~emission~~] emissions control devices required in association with that engine) may be eligible for a waiver of compliance with portions of [~~this subsection~~] Subsection B of 20.11.100.17 NMAC. The program manager [~~or designee~~] shall determine if a vehicle has been retrofitted with an engine that is not adaptable to the [~~emission~~] emissions control requirements for the vehicle chassis model year. [~~Upon such~~] When the program manager makes the determination, the program manager may waive the requirements for replacement of [~~emission~~] emissions control equipment. There shall be no waiver for the installation of a catalytic converter unless the program manager determines installation would create a safety hazard.

C. Visible emissions (smoke): All [~~non-diesel~~] motor vehicles subject to inspection must pass an inspection for visible emissions. [~~Prior to conducting the OBDII or two-speed idle test, the *air care* inspector will observe the tailpipe for visible smoke while the driver raises the engine speed to 2200 - 2800 rpm for a minimum of 10 seconds to be followed immediately by observation at idle for a minimum of 10 seconds.~~] The *air care* inspector [~~will~~] shall watch the tailpipe during the idle portion of the emissions test and during the high-speed portion of the emissions test (using a mirror if necessary). If the inspector observes ***any*** smoke (not steam) during any part of the inspection, the visible portion of the emissions test shall be a *fail*.

D. Gas cap (pressurized): All 1975-2005 model year vehicles subject to inspection must pass a pressurized gas cap test to check the integrity of the gas cap seal designed to minimize fuel vapor loss or hydrocarbon emissions. Any vehicle with a gas cap that does not hold pressure consistent with the design standard for the vehicle shall be *failed*. [~~Gas cap testing for 1996 and newer OBDII tested vehicles shall not commence until 2005 and shall be limited to vehicles that are at least four years old.~~]

E. On-board diagnostics (OBDII):

(1) All 1996 and newer gasoline motor vehicles must pass an on-board diagnostics test [~~consistent with~~] specified by 40 CFR Part 51, Subpart S, *Inspection/ Maintenance Program Requirements*. Any vehicle with an illuminated malfunction indicator lamp (MIL) [~~and/or~~] or a set diagnostic trouble code (DTC) shall be *failed*. [~~There will be a one year phase-in period (2004) during which any vehicle which fails the OBDII test will default to the two-speed idle test. Vehicles which fail the OBDII test during phase-in but pass the two-speed idle test with maximum allowable exhaust standards of 100ppm hydrocarbons and 1.0% carbon monoxide will be issued a *pass* certificate valid only for a one year registration. Certain~~] Any 1996 and newer model year vehicles [~~which~~] that have been determined by the program manager to be OBDII incompatible shall be tested using the two-speed idle test with maximum allowable exhaust standards of 100 ppm hydrocarbons and 1.0 % carbon monoxide.

(2) all 1998 and newer diesel motor vehicles must pass an on-board diagnostic test beginning January 1 of the first year following the federally effective date for the 2011 revised ozone standard, or January 1, 2013, whichever is earlier.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.17 NMAC - Rn, 20 NMAC 11.100.II.6, 10/1/02; A, 5/1/04; 20.11.100.17 NMAC - Rn & A, 20.11.100.14 NMAC, 1/1/12]

[~~20.11.100.15~~] 20.11.100.18 VEHICLE INSPECTION REPORT:

A. Vehicle inspection reports (VIRs) shall only be purchased at program headquarters. Unused VIRs shall not be exchanged, sold or given by any person to any other person. All unused VIRs [~~which, a person, does not intend to use~~] shall be turned in to the headquarters for credit or a refund, as the program manager determines is appropriate.

B. A pass VIR shall be issued to each motorist whose vehicle has undergone inspection and passed all criteria [~~relative to~~] regarding on-board diagnostics, exhaust emissions, anti-tampering, pressurized gas cap and visible emissions as applicable. A fail VIR shall be issued to each motorist whose vehicle has undergone inspection and failed on-board diagnostics or any of the criteria [~~relative to~~] regarding exhaust emissions, anti-tampering, pressurized gas cap and visible emissions as applicable. Vehicles [~~which~~] that have failed any portion of an inspection and have been subsequently repaired and adjusted and passed a reinspection shall be issued a pass VIR. Pass VIRs shall be presented to the MVD upon re-registration of the vehicle.

C. VIRs may not be defaced by stamping information on, or affixing stickers to, the front or back of the VIR except in the delineated area designated by the VPMD program manager. Any *air care* inspector or *air care* station found to be defacing VIRs may be subject to an enforcement action pursuant to 20.11.100.36 NMAC and penalties pursuant to 20.11.100.33 NMAC.

[5/20/88. . .11/13/91, 9/23/94, 12/1/95, 8/1/97; 20.11.100.18 NMAC - Rn, 20 NMAC 11.100.II.7, 10/1/02; A, 5/1/04; 20.11.100.18 NMAC - Rn & A, 20.11.100.15 NMAC, 1/1/12]

[~~20.11.100.16~~] 20.11.100.19 REPAIRS, ADJUSTMENTS, AND RE-INSPECTIONS: [~~Each~~] Every motor vehicle that fails an inspection required by [~~this part~~] 20.11.100 NMAC shall be repaired as necessary to pass re-inspection. [~~Where~~] If replacement of parts is required, [~~such~~] the parts shall only be new aftermarket parts approved by the program manager or new original equipment, manufacturer's parts or assemblies.

A. Repairs required by [~~this subsection~~] Subsection A of 20.11.100.19 NMAC, shall include but are not limited to, the following as applicable to the type of failure.

(1) **Exhaust emissions:** adjust idle speed, fuel/air ratio and ignition timing to manufacturer's specifications including replacement of spark plugs, spark plug wires, air filters and PCV specified by the manufacturer.

(2) **Anti-tampering:** replace the missing or disabled components with replacement parts acceptable to the program manager.

(3) **Visible emissions:** Repair engine or replace inoperative [~~emission~~] emissions control devices as required to eliminate visible emissions.

(4) **Gas cap:** Replace gas cap with a new approved aftermarket or original equipment cap.

(5) **On-board diagnostics:** Repair malfunction(s) indicated by diagnostic trouble code(s), clear diagnostic trouble code(s) and drive vehicle through drive cycle required to reset readiness monitors in order to ensure repair effectiveness and elimination of diagnostic trouble codes.

B. Any person may repair, adjust or replace parts as necessary to prepare a vehicle to pass re-inspection, but not after an inspection has commenced.

C. Re-inspections may be obtained at any *air care* station. One free retest, within 90 calendar days of a failed test, may be obtained at the program headquarters, if requested.

[11/13/91. . .9/23/94, 12/1/95; 20.11.100.19 NMAC - Rn, 20 NMAC 11.100.II.8, 10/1/02; 20.11.100.19 NMAC - Rn & A, 20.11.100.16 NMAC, 1/1/12]

[~~20.11.100.17~~] 20.11.100.20 COMPLIANCE TIME EXTENSION: [~~Normal Difficulty:~~]

A. Time extension for repairs. Vehicles[~~,which~~] that are unable to pass re-inspection [~~are~~] may be eligible to obtain a time extension [~~providing~~] if the following conditions are met:

[(1) **Exhaust emissions:** In order for a motor vehicle to be eligible for a time extension, the owner must:

(a) provide evidence, satisfactory to the program manager, that a low emissions tune-up has been performed to the extent possible considering engine condition; repair and replace nonfunctional emissions control devices;

(b) provide evidence that any emissions control devices needed to bring the vehicle into compliance are not available;

(c) petition the program manager at the program headquarters, provide receipts for all parts and/or repair work performed, and list at least the following information in order to be eligible for consideration:

(i) vehicle VIN number;

(ii) model year and manufacturer;

(iii) owner's name and street address;

(iv) valid driver's license number and/or any other information or documentation that the program manager may deem necessary; and

(v) if applicable, identification of where the re-inspection, tune-up and/or determination was made, including documentation acceptable to the program manager that critical parts are unavailable.

(2) **Anti-tampering**: In order for a motor vehicle to be eligible for a time extension, the vehicle must pass all criteria relative to exhaust emissions for its model year and weight. If the vehicle cannot pass the exhaust emissions, in order for a motor vehicle to be eligible for a time extension, the owner must:

(a) provide evidence that a low emissions tune-up has been performed to the extent possible considering engine condition; repair and replace nonfunctional emissions control devices;

(b) provide evidence that any emissions control devices needed to bring the vehicle into compliance are not available;

(c) petition the program manager at the headquarters, provide receipts for all parts and/or repair work performed, and list at least the following information in order to be eligible for consideration:

(i) vehicle VIN number;

(ii) model year and manufacturer;

(iii) owner's name and street address;

(iv) valid driver's license number and/or any other information or documentation that the program manager may deem necessary; and

(v) if applicable, identification of where the re-inspection, tune-up, and/or determination was made including documentation acceptable to the program manager that critical parts are unavailable.]

(1) the owner shall provide evidence satisfactory to the program manager or his designee, that at least $300.00 has been spent on the vehicle at a licensed repair facility for emissions-related repairs; or

(2) the owner shall provide evidence satisfactory to the program manager or his designee that at least $300.00 of repair work is required to bring the vehicle up to an engine performance level capable of passing an emissions inspection; and

(a) in order to receive a time extension based on a estimate of repairs, the owner must prove to the program manager or his designee that the owner is financially incapable of paying for the repairs; and

(b) the repair work estimate shall be from a licensed repair facility.

B. Application for time extension. An owner who meets the criteria may apply for a time extension by petitioning the program manager or his designee at the VPMD headquarters, providing receipts for all parts and repair work performed, or providing the required estimate, and listing the following information in order to be eligible for consideration:

(1) vehicle VIN number;

(2) model year and manufacturer;

(3) owner's name and street address;

(4) valid driver's license number and any other information or documentation that the program manager deems necessary; and

(5) if applicable, identification of the business and address where the re-inspection, tune-up or determination was made, including documentation acceptable to the program manager or his designee that critical parts are unavailable.

[B.]C. Time extension [for repairs] limitations:

(1) [Vehicles which require repair in addition to a low emission tune-up may be eligible for a time extension of up to 12 months for repairs over three hundred dollars ($300).] A time extension shall be granted only one time in the life of a vehicle and shall be for a period of up to 12 consecutive months.

(2) [The vehicle owner must petition the program manager for a time extension for repairs. Upon receipt of the petition the program manager may grant a time extension based upon the validity and applicability of the information provided. In addition to the time extensions described above, the program manager has the discretion to issue time extensions for extraordinary circumstances and shall report such extensions on the next program report to the board.] If a vehicle that has been granted a time extension is repaired within the first 90 days of the extension, the extension may be cancelled and not counted as the one-per-life-of-the-vehicle time extension.

(3) Time extensions shall be limited to 90 days for motor vehicles that exceed any of their maximum allowable exhaust standards as [prescribed in] specified in Table I [shown in Paragraph (1) of] at Subsection A of [20.11.100.14] 20.11.100.17 NMAC by more than twice the level allowed.

D. Free inspection for timely repair. Any failing vehicle repaired within 90 days of its failed test is eligible for a free retest of that vehicle at the vehicle pollution management division headquarters.

[C.]E. Inspection due following extension: Any person [owning] who owns a motor vehicle for which a time extension has been issued pursuant to [this section] 20.11.100.20 NMAC shall have that vehicle inspected within the time frame specified [by] in the extension granted for that vehicle.

[D.]F. Expiration upon sale: If a motor vehicle is granted a time extension under [this section] 20.11.100.20 NMAC and is sold within the time extension period, [such] the sale shall terminate the extension. The holder of the original time extension [must] shall inform each potential buyer that the vehicle does not comply with the [emission] emissions requirements of [this Part] 20.11.100 NMAC. The seller [must] shall also inform each potential buyer that the time extension is void upon the sale and the vehicle cannot be registered unless the vehicle passes an emissions inspection.

[E.]G. Appeals: Any person aggrieved by the decision of the program manager or designee regarding a compliance time extension may appeal by petitioning the [director of the environmental health department (EHD). To perfect the appeal, the person aggrieved must deliver the completed form to the headquarters within 15 consecutive days after receipt of the program manager's decision. Following receipt of the request for hearing, the director of the EHD shall report his or her decision to the program within 48 hours of the determination. By the end of the next working day or sooner, if reasonably possible, the program shall report the decision of the director of the EHD to the petitioner. The director of the EHD will present written findings of fact and conclusions of law to the division within 45 days, and the program shall forward the findings and conclusions promptly to the petitioner.] program manager in writing for reconsideration of the decision. The petition shall provide the basis for reconsideration of the decision made regarding the time extension. The program manager, at his discretion, may review the petition and record and affirm or deny the decision on the request for the time extension, or the program manager may arrange for a hearing on the record at the city of Albuquerque

office of administrative hearings, to be held no later than 15 working days after receipt of the request for reconsideration. The petitioner shall submit a $50.00 fee to the office of administrative hearings, which shall set the time and place for the hearing. The hearing officer shall present written findings of fact and a recommendation of action to the program manager, who shall make the final decision and forward the findings and decision promptly to the petitioner. The final decision of the program manager may be appealed to the Albuquerque - Bernalillo county air quality control board in accordance with 20.11.81 NMAC.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.20 NMAC - Rn, 20 NMAC 11.100.II.9, 10/1/02; A, 5/1/04; 20.11.100.20 NMAC - Rn & A, 20.11.100.17 NMAC, 1/1/12]

[~~20.11.100.18~~] 20.11.100.21 CERTIFICATION REQUIREMENTS FOR *AIR CARE* STATIONS:

A. No person shall solicit, advertise or imply that a facility is an *air care* station certified by the program manager to conduct inspections pursuant to [~~this part~~] 20.11.100 NMAC without having a current program-issued certificate on display on the premises. Any *air care* inspection station that has its certification permanently or temporarily withdrawn or canceled by the board or the program manager shall immediately remove all inspection related signs and cease to represent the facility as a certified *air care* station.

B. No *air care* station owner or operator shall allow a person to conduct any part of an inspection pursuant to [~~this part without that person being~~] 20.11.100 NMAC unless the person is an *air care* inspector certified by the program manager and [~~having~~] has a current program-issued certificate on display on the premises.

C. Any person may [~~make application~~] apply for certification [~~for the operation of~~] to operate an *air care* station.

D. [~~Prior to construction, installation or renovation of any~~] Before constructing, installing or renovating a facility or building intended for use as an *air care* station, the owner or operator [~~must have submitted~~] shall submit an application and [~~received~~] receive pre-approval to operate the facility as an *air care* station. The applicant shall also provide information on traffic flow and how it will be managed to prevent unsafe conditions. The applicant shall also indicate how and where the customer may view the vehicle inspection from start to finish.

E. The program manager may issue a station certificate to a person who [~~makes application~~] applies and demonstrates to the program manager's satisfaction the following minimum conditions [~~will~~] shall be in effect and equipment [~~will~~] shall be present at the applicant's proposed *air care* station:

(1) at least one certified *air care* inspector whose certification is current and listed with the program manager [~~will~~] shall be [~~on hand~~] present and [~~will~~] shall conduct all the inspections of motor vehicles; no [~~such~~] inspection [~~will~~] shall be performed in whole or in part by any person [~~other than~~] who is not a certified *air care* inspector;

(2) at least one approved [~~VEGAS~~] emissions analyzer owned or leased by the station [~~will~~] shall be in place and operating within the equipment specification limits [~~set forth in 20.11.100.25 NMAC~~];

(3) in order to qualify for certification, the facility shall also be equipped and supplied as follows:

(a) sufficient hand tools and automotive diagnostic equipment for proper performance of the inspections;

(b) program approved span gas and compatible equipment for performing gas span checks;

(c) suitable non-reactive tail pipe extenders or probe adapters for inspecting vehicles with screened or baffled exhaust systems; [~~and~~]

(d) the approved **[**~~VEGAS~~] emissions analyzer manufacturer's maintenance and calibration manual; and

(e) gas cap checking adaptors;

(4) the *air care* station [~~must~~] shall provide the vehicle owner or driver with access to the test area so that observation of the entire official inspection process is possible; access may be limited, but in no way shall prevent full observation [~~from beginning to end~~.] of the entire official inspection process from start to finish; and

(5) [~~The program manager may deny certification to a facility that:~~

~~(a) does not comply with all applicable federal, state and local laws and regulations, or~~

~~(b) does not provide for an entrance and a dedicated inspection area inside the facility that is large enough to accept all vehicles with a GVW of 8500 lbs or less presented for inspection, or~~

~~(c) does not provide for adequate traffic flow, or~~

~~(d) does not provide adequate viewing access by the vehicle owner or driver or for surveillance by program auditors.~~]

[~~(6)~~]certified *air care* station owners or operators shall be responsible for the general management of their facility(ies) and for the supervision of their *air care* inspectors [~~and technicians~~] in accordance with [~~this part, the VPMP *procedures manual* and other procedures and policies of the program~~] 20.11.100 NMAC.

F. "Emissions-inspection-only" stations may be authorized by the program manager. [~~Such~~] Emissions-inspection-only stations shall indicate on a sign authorized by the program and placed in a readily visible location that no emissions-related adjustments or repair services are available. Repair-related requirements of [~~Paragraph (2), of Subsection G of 20.11.100.18~~] Subsection B of 20.11.100.23 NMAC do not apply to "inspection-only" stations.

[~~G. Performance of certified *air care* stations:~~

~~(1) A certified *air care* station will obtain and pay for routine and unscheduled maintenance or replacement parts of the approved exhaust gas analyzer.~~

~~(2) The certified *air care* station will accept and perform emissions inspections on all vehicles presented for inspection and must have adequate reference manuals and basic emissions information in accordance with the VPMP procedures manual. Emissions inspections will not be performed on vehicles when the emissions inspection would pose a threat to any person's safety. Any motor vehicle accepted for repair shall be one for which the station has adequate information regarding idle speed, idle mixture, timing, dwell, fast idle speed specifications, high altitude specifications and information describing emissions control systems, diagnostic and repair procedures if normally available in the trade.~~

~~(3) The times that a certified *air care* inspector will be available to make inspections shall be posted if such times do not include all hours the station is open for business.~~

~~(4) Each certified *air care* station shall post a sign in a conspicuous location, on the exterior of the station, indicating testing hours and the fee charged for inspections. The sign shall meet the uniform format and style requirements established by the program manager.~~

~~(5) A certified *air care* station may not refuse any vehicle for inspection based upon the race, color, religion, sex, national origin or ancestry, age or physical handicap or disability of the motorist, nor may the station refuse any vehicle for inspection because of the make, model, or year of the vehicle.~~

~~(6) Each certified *air care* station shall provide vehicle owners or drivers access to the inspection area so that the owner or driver can observe the official inspection. Access can be limited but in no way shall prevent full observation.~~

~~(7) A certified *air care* station shall perform initial emissions inspection on vehicles without repair or adjustment prior to the inspection. This does not apply to a vehicle when an owner or driver specifically asks for repairs or adjustments prior to an emissions inspection and a work order is completed and authorized by the vehicle~~

~~owner or driver.~~

~~(8) Each certified *air care* station must employ a sufficient number of *air care* inspectors so that it can adequately staff regular testing hours, as set by the *air care* station and approved by the program manager.~~

~~(9) Each *air care* station must ensure that emissions inspections are performed on every vehicle, upon presentation, unless a vehicle test poses a threat to a person's safety. An *air care* station which is not designated as an "inspection only" station may elect to conduct testing "by appointment only," as approved by the program manager, but must indicate this on the station sign in lieu of testing hours.~~

~~**H.** Any person owning or operating a certified *air care* station which undergoes change of business name, ownership, official inspection personnel, or approved exhaust gas analyzers, or ceases to operate as an *air care* station, shall notify the program manager within 10 days of such change. Any certified *air care* station may have its certification revoked for failure to provide such notice. Relocation of an *air care* station, without review and written approval of the program manager being required shall automatically terminate and invalidate a current station certificate.~~]

[5/20/88. . .11/13/91, 9/23/94, 12/1/95; 20.11.100.21 NMAC - Rn, 20 NMAC 11.100.II.10, 10/1/02; 20.11.100.21 NMAC - Rn & A, 20.11.100.18 NMAC, 1/1/12]

20.11.100.22 BASIS FOR DENIAL OF *AIR CARE* STATION CERTIFICATION: The program manager may deny certification to a facility that does not:

A. comply with all applicable federal, state and local laws and regulations;

B. provide for an entrance and a dedicated inspection area inside the facility that is large enough to accept all vehicles with a GVW of 8500 lbs or less presented for inspection;

C. provide for adequate traffic flow; or

D. provide adequate viewing access by the vehicle owner or driver or for surveillance by program auditors.

[5/20/88. . .8/25/92, 9/23/94; 20.11.100.22 NMAC - Rn, 20 NMAC 11.100.II.11, 10/1/02; A, 5/1/04; 20.11.100.22 NMAC - N, 1/1/12]

20.11.100.23 PERFORMANCE OF CERTIFIED *AIR CARE* STATIONS:

A. A certified *air care* station shall obtain and pay for routine and unscheduled maintenance and replacement parts for the approved exhaust gas analyzer.

B. A certified *air care* station shall accept and perform emissions inspections on all vehicles presented for inspection and shall have adequate reference manuals and basic emissions information. Emissions inspections shall not be performed on vehicles if the emissions inspection would pose a threat to any person's safety. A motor vehicle shall not be accepted for repair unless the station has adequate information regarding idle speed, idle mixture, timing, dwell, fast idle speed specifications, high altitude specifications and information describing emissions control systems, diagnostic and repair procedures, if normally available in the trade.

C. The times that a certified *air care* inspector will be available to conduct inspections shall be posted if inspection times do not include all hours the station is open for business.

D. Each certified *air care* station shall post a sign in a conspicuous location, on the exterior of the station, indicating testing hours and the fee charged for each inspection. The sign shall meet the uniform format and style requirements established by the program manager.

E. A certified *air care* station shall not refuse any vehicle for inspection based upon the race, color, religion, sex, national origin or ancestry, age or physical handicap or disability of the motorist, nor may the station refuse any vehicle for inspection because of the make, model or year of the vehicle.

F. Each certified *air care* station shall provide vehicle owners or drivers access to the inspection area so that the owner or driver can observe the official inspection. Access may be limited but in no way shall prevent full observation.

G. A certified *air care* station shall perform initial emissions inspection on vehicles without repair or adjustment prior to the inspection. This requirement shall not apply to a vehicle if an owner or driver specifically asks for repairs or adjustments prior to an emissions inspection, without prior suggestion or recommendation by the inspector or station owner or operator, and a work order is completed and authorized by the vehicle owner or driver.

H. Each certified *air care* station shall employ a sufficient number of *air care* inspectors so the station can adequately staff regular testing hours, as set by the *air care* station and approved by the program manager.

I. Each *air care* station shall ensure that emissions inspections are performed on every vehicle, upon presentation, unless a vehicle test poses a threat to a person's safety. An *air care* station that is not designated as an "inspection only" station may elect to conduct testing "by appointment only," as approved by the program manager, but shall indicate this on the station sign in lieu of posting the testing hours.

J. A person who owns or operates a certified *air care* station that changes the business name, ownership, official inspection personnel, or approved exhaust gas analyzers, or ceases to operate as an *air care* station, shall notify the program manager in writing within 10 days of the change. A certified *air care* station may have its certification revoked for failure to provide required notice. Relocation of an *air care* station, without prior review and written approval of the program manager as required, shall automatically terminate and invalidate a current station certificate.

[5/20/88. . .11/13/91, 9/23/94, 12/1/95, 8/1/97; 20.11.100.23 NMAC - Rn, 20 NMAC 11.100.II.12, 10/1/02; A, 5/1/04; 20.11.100.23 NMAC - N, 1/1/12]

~~[20.11.100.19]~~ 20.11.100.24 ~~[VEHICLE POLLUTION MANAGEMENT PROGRAM]~~ FLEET *AIR CARE* STATIONS:

A. No individual or business shall represent itself as a certified fleet *air care* station without being in possession of a duly authorized and currently valid certificate issued by the program manager.

B. Any person may apply for authorization for an *air care* station authorized by the program to perform inspections under [~~this part~~] 20.11.100 NMAC for the purposes of fleet inspection of a company or corporate business, or governmental fleet. [~~These~~] Fleet *air care* stations shall not offer or provide the inspections to the company's employees or the general public. Fleet *air care* stations shall be equipped and operated and shall be subject to the same quality assurance requirements as a certified *air care* station. The signage requirements of [~~Paragraphs (3) and (4), of Subsection G of 20.11.100.18 NMAC are waived in such a facility~~] Subsections C and D of 20.11.100.23 NMAC do not apply to a fleet *air care* station. The fee for [~~authorization of such~~] certifying a fleet *air care* station shall be the same as for a certified *air care* station.

C. Notwithstanding [~~the above~~] Subsections A and B of 20.11.100.24 NMAC, any person with a fleet may contract with any certified *air care* station to provide inspections [~~needed~~] required to satisfy [~~this part~~] 20.11.100 NMAC.

[5/20/88. . .8/25/92, 9/23/94, 12/1/95, 20.11.100.24 NMAC - Rn, 20 NMAC 11.100.II.13, 10/1/02; 20.11.100.24 NMAC - Rn & A, 20.11.100.19 NMAC, 1/1/12]

~~**[20.11.100.20 VEHICLE POLLUTION MANAGEMENT PROGRAM HEADQUARTERS:**~~

~~**A.** The program manager~~

~~shall establish and maintain a VPMP headquarters, to be an emissions inspection facility equipped with at least one program certified VEGAS from each manufacturer participating in the program, and employing at least two ASE certified technicians. The facility shall be operated by the city to provide services to the public and as necessary to facilitate program responsibilities and administer the provisions of this part.~~

~~**B.** The headquarters shall have, but not be limited to, the following responsibilities:~~

~~(1) Provide for non-binding mediation of disputes arising from inspection activities by certified *air care* stations or certified *air care* inspectors, to include if necessary a verification test at no cost to the person requesting such test.~~

~~(2) Evaluate and issue a compliance time extension for vehicles unable to pass the inspection test criteria as provided under the terms of this part.~~

~~(3) Investigate and maintain records regarding complaints against certified *air care* stations, certified *air care* technicians and certified *air care* inspectors, and forward such findings to the board.~~

~~(4) Perform quality assurance audits as required by 20.11.100.24 NMAC.~~] [5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.20 NMAC - Rn, 20 NMAC 11.100.II.9, 10/1/02; A, 5/1/04; Repealed, 1/1/12]

20.11.100.25 Reserved

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.25 NMAC - Rn, 20 NMAC 11.100.II.14, 10/1/02; A, 5/1/04; Repealed, 1/1/12]

~~[20.11.100.21]~~ 20.11.100.26 CERTIFICATION OF *AIR CARE* INSPECTORS:

A. No person shall represent [~~him or herself~~] himself as a certified *air care* inspector without being in possession of a duly authorized and currently valid certificate issued by the program manager.

B. Certificates issued under [~~this subsection~~] Subsection B of 20.11.100.26 NMAC shall be valid for 12 months unless the program manager requires re-certification [~~at some shorter time~~] earlier as provided [~~below~~] in [~~Paragraph (3), of Subsection B of 20.11.100.21~~] 20.11.100.27 NMAC.

(1) Certification requirements for *air care* inspectors:

(a) A person [~~desiring to be certified~~] seeking certification shall file an application with the program manager on forms provided by the program. The issuance of certificates shall be administered by the program. Before an applicant may be granted a certificate, the applicant [~~must~~] shall demonstrate general knowledge, skill and competence requirements under the program and in accordance with training and testing requirements set forth by the program manager.

(b) The knowledge, skill and competence that an applicant must demonstrate shall include, but is not [~~be~~] limited to, the following:

(i) general operation and purpose of emissions control systems for all types of motor vehicles;

(ii) how HC and CO relate to timing and air/fuel ratio control;

(iii) rules and regulations pertaining to inspection and the inspection procedures established in the [~~procedures manual and this part~~] 20.11.100 NMAC;

(iv) general understanding of the benefits to vehicle owners provided in the *Defect Warranty Provisions* of Section 207(a) and the *Performance Warranty Provisions* of Section 207(b) of the Federal Clean Air Act as it applies to the inspection;

(v) ability to recognize by visual inspection the emissions control equipment for 1975 and newer vehicles, distinguishing between those [~~required~~] requiring and those not requiring inspection;

(vi) operation and proper use, care, maintenance and gas span checking of the approved exhaust gas analyzers;

(vii) proper use, filing and storage of inspection forms, [~~certificates of inspection~~] VIRs and supplemental documents; [~~and~~]

(viii) ability to perform an actual emissions inspection from start to finish; and

(ix) other information as the program manager requires.

(c) The program may issue a certificate to the applicant when the program manager determines that [~~there has been successful completion of~~] the applicant has successfully completed the certification requirements of [~~this part~~] 20.11.100 NMAC.

(d) Persons certified under **[**~~this subsection~~] Subsection B of 20.11.100.26 NMAC shall inform the program manager within [~~ten~~] 10 days of any change in legal name, employment status or current mailing address. Each certified inspector will be assigned a personal identification number [~~which~~] that will be checked for correlation in data audits of the program. Failure to keep the program manager informed may [~~be cause for~~] result in revocation of certification.

(2) Performance of certified *air care* inspectors: [~~Every~~] Certified *air care* [~~inspector shall comply with the VPMP *procedures manual* and the board regulations and~~] inspectors shall:

(a) at no time allow another person to use his **[**~~or her~~] certificate or personal code to enter into an approved exhaust gas analyzer, nor [~~will~~] shall he [~~or she~~] delegate his [~~or her~~] authority to another person to perform any official inspection or any part of an inspection under his [~~or her~~] name or personal identity code;

(b) accept all vehicles for **[**~~emission~~] emissions inspection and perform the emissions inspections in an expedient manner in order to avoid unnecessary public inconvenience; however, an *air care* inspector shall not accept [~~any~~] a vehicle for inspection if the inspection would pose a threat to any person's safety;

(c) refrain from deviation from **[**~~this part~~] 20.11.100 NMAC and official procedures established for this program;

(d) at no time during the emissions inspections sequence attempt or allow adjustments to be performed on the vehicle being inspected until the final VIR is complete; and

(e) sign all **[**~~certificates of inspection~~] VIRs at the time of inspection.

~~**[**(3) Re-certification requirements for certified air care inspectors:~~

~~(a) The program manager will reissue certification to any *air care* inspector who demonstrates updated competency as evidenced under the then-current requirements administered by the program. Such re-certification shall be required upon expiration of a current annual certificate or sooner as provided below.~~

~~(i) If the board determines a need to update the general qualifications of *air care* inspectors prior to the annual re-certification period, holders of such certificates may be required to re-qualify.~~

~~(ii) As a result of auditing or investigating consumer complaints, a certified inspector may be required to re-certify if the program manager determines that competency and related problems must be corrected in order to protect the public.~~

~~(b) Certified *air care* inspectors must re-certify during the month of expiration of a current certification. The program shall mail written notification to the station address of record of any active certified inspector whose certificate is about to expire or is otherwise being revoked. The notice shall inform the person of the necessity for re-certification and the nature of such skills, systems, or any updated procedures or retraining deemed necessary to perform emissions inspections. The notice shall state the deadline for re-certification.~~] [5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95, 20.11.100.26 NMAC - Rn, 20 NMAC 11.100.II.15, 10/1/02; A, 5/1/04; A, 9/1/04; 20.11.100.26 NMAC - Rn & A, 20.11.100.21 NMAC, 1/1/12]

~~[20.11.100.22 CERTIFICATION OF *AIR CARE* TECHNICIANS: [Reserved]]~~
[5/20/88. . .8/25/92, 9/23/94; 20.11.100.22 NMAC - Rn, 20 NMAC 11.100.II.11, 10/1/02; A, 5/1/04; Repealed, 1/1/12]

~~[20.11.100.23 EXEMPTED SPECIAL VEHICLES CLASSIFICATIONS:~~
~~A. All new motor vehicles shall be exempt from inspection only during the initial two registration periods first following the date of the manufacturer's certificate of origin (MCO).~~
~~B. Vehicles, which are fueled by a mixture of gasoline and oil for purposes of lubrication, are exempt from inspection.~~
~~C. Motor vehicles that are used for legally sanctioned competition and not operated on public streets and highways.~~
~~D. Implements of husbandry, or road machinery not regularly operated on public streets and highways.~~
~~E. Other vehicles which are not regularly operated on public streets and highways after making a proper showing to demonstrate such to the program manager.~~
~~F. Diesel and electric powered vehicles. New diesel vehicles are exempt until title transfer. Diesel vehicles must pass a visible emissions test at VPMD Program Headquarters prior to registration following a title transfer.~~
~~G. Vehicles leased by a leasing company whose place of business is Bernalillo county, to a person who resides outside of Bernalillo county. However an exemption shall not be granted if the person resides in an area, which has an EPA-required vehicle inspection program.~~
~~H. Vehicles manufactured during or before model year 1974.~~
~~I. Vehicles sold between licensed dealers.~~
~~J. Vehicles with a GVW of 10,001 lbs or more.~~
~~K. Dedicated alternative fueled vehicles classified as super ultra low emission vehicles.~~
~~L. Electric hybrid vehicles classified as super ultra low emission vehicles.]~~
[5/20/88. . .11/13/91, 9/23/94, 12/1/95, 8/1/97; 20.11.100.23 NMAC - Rn, 20 NMAC 11.100.II.12, 10/1/02; A, 5/1/04; Repealed, 1/1/12]

20.11.100.27 RECERTIFICATION REQUIREMENTS FOR CERTIFIED *AIR CARE* INSPECTORS:

A. The program manager will reissue certification to any *air care* inspector who demonstrates updated competency as evidenced under the then-current requirements administered by the program. Re-certification shall be required upon expiration of a current annual certificate or sooner if either of the following situations exist.

(1) If the program manager determines a need to update the general qualifications of *air care* inspectors prior to the annual re-certification period, holders of the certificates may be required to re-qualify.

(2) As a result of auditing or investigating consumer complaints, a certified inspector may be required to re-certify if the program manager determines that competency or other problems must be corrected in order to protect the public.

B. Certified air care inspectors shall re-certify during the month the current certification is scheduled to expire.

C. Each *air care* inspector is responsible for applying for recertification in a timely manner. The date of certification expiration is provided on the inspector certification certificate, which shall be displayed in the *air care* station, and the gas analyzer provides notice of certification expiration starting at least 30 days prior to the certificate expiration date. VPMD will not give special consideration regarding the time and availability of a recertification class to an *air care* inspector whose certification has lapsed unless good cause exists, as determined by the program manager.

D. VPMD will review the VID records of each *air care* inspector at the time of the recertification request to determine if there is a pattern of violations or fraud during inspections performed during the previous three years.

E. If a former air care inspector requests recertification, but has allowed a lapse in recertification that is greater that 90 days in length, the program manager may require the former inspector to take the week-long certification training class rather than the recertification training class.

[5/20/88. . .12/1/95; 20.11.100.27 NMAC - Rn, 20 NMAC 11.100.II.16, 10/1/02; 20.11.100.27 NMAC - N, 1/1/12]

20.11.100.28 DENIAL OR SUSPENSION OF RECERTIFICATION FOR *AIR CARE* INSPECTOR:

A. The VPMD program manager may suspend an existing certification or deny recertification for the following reasons:

(1) the VPMD program manager has determined, as a result of a review of the VID or VPMD inspection files, that an *air care* inspector has committed violations resulting in an accumulation of 16 points or more;

(2) the *air care* inspector has failed to attend the recertification training; or

(3) the *air care* inspector has failed the recertification test.

B. Whenever a certification has been suspended and the certification expires during the suspension period, the *air care* inspector may not obtain a new certification until the term of the suspension has expired.

[5/20/88; 20.11.100.28 NMAC - Rn, 20 NMAC 11.100.II.17, 10/1/02; 20.11.100.28 NMAC - N, 1/1/12]

20.11.100.29 ADMINISTRATIVE FEES FOR CERTIFICATIONS AND RECERTIFICATIONS:

A. Any person seeking certification, or annual recertification thereof, in order to participate in the program as an *air care* station or *air care* inspector shall pay to the city the required fee as established below, before a certification shall be issued or renewed by the program.

Certifications	**Amount**
Certified *Air Care* Station	$200.00
Certified *Air Care* Inspector	$35.00

B. Every *air care* station or *air care* inspector who has had a certification suspended shall pay the following fees before the *air care* station or *air care* inspector certification will be reinstated.

Reinstatement	Amount
Air Care Station Certification	$200.00
Air Care Inspector Certification	$35.00

C. Any *air care* inspector who requests to be certified on more than one motor vehicle emissions analyzer shall pay a $35.00 fee for each analyzer.

[9/23/94. . .12/1/95, R 8/1/97; 20.11.100.29 NMAC - Rn, 20 NMAC 11.100.II.18, 10/1/02; 20.11.100.29 NMAC - N, 1/1/12]

[20.11.100.24 QUALITY CONTROL OF *AIR CARE* STATIONS:] 20.11.100.30 VPMD QUALITY ASSURANCE AUDITS OF *AIR CARE* STATIONS AND *AIR CARE* INSPECTORS: VPMD's quality assurance audits and data analysis are designed to: discover, correct and prevent fraud, waste and abuse; determine whether emissions testing procedures are being correctly performed; assess whether emissions analyzers are measuring accurately; and find any existing problems that could impede program performance.

A. The program shall conduct announced and unannounced overt quality assurance audits of each certified *air care* station as ordered by the program manager. The duties of the VPMD auditor shall include but not be limited to the following:

(1) verify that the equipment, reference materials and staffing agree with the information on file with the program manager and are sufficiently maintained to meet the intent of the VPMD program;

(2) check the accuracy of data entry and production of the final inspection reports furnished to motorists;

(3) perform a complete quality assurance survey on the analyzer, the calibration gas system, and automatic zero-span performance in relation to the specifications and requirements of [this part] 20.11.100 NMAC;

(4) the field audit gases for standardizing approved analyzers used for inspections shall conform to the provisions [outlined] specified in 40 CFR, Part 86, Subpart B, Section 86.114-94, *Analytical Gases*, for automotive exhaust emissions testing; those gases shall be of "precision" quality, certified to be within ± (plus-or-minus) 1% of the labeled concentration, and certified by the NIST; and

(5) examine the service contract for the analyzer to assure proper lockout controls, data record capture and response in case of trouble.

B. The program shall perform covert quality assurance audits without offering official credentials or identification by submitting [any] motor [vehicle] vehicles for inspection [so as] in order to examine the station operation under actual conditions. [Such inspection] covert audit vehicles may be offered at random times in a condition [involving] resulting from intentional maladjustment, or [intentionally removed or rendered inoperative] with emissions control components intentionally removed or rendered inoperative by VPMD. The results of [such] covert audits by the program will provide data for assessing the performance of [the] certified *air care* [station] stations and certified *air care* inspectors and [its] their adherence to the requirements of [this part and the VPMP *procedures manual*] 20.11.100 NMAC.

C. VPMD shall perform covert quality assurance audits of the *air care* stations and *air care* inspectors by observing their activities unannounced from a remote off-site area.

D. VPMD shall perform data analysis of information contained in the VID to audit the performance of *air care* stations and *air care* inspectors. The criteria for the data analysis will be selected by VPMD in response to VPMD investigations, complaints, certification renewals or other triggers, or may occur at random times on randomly-selected stations and inspectors.

[20.11.100.30 NMAC - Rn & A, 20.11.100.24 NMAC, 1/1/12]

[20.11.100.25 SPECIFICATIONS FOR APPROVED VEGAS:

A. Performance and design specifications for the VEGAS: The program manager shall establish the specifications for the VEGAS, which shall be used exclusively by all stations, which have been certified by the program to perform emission inspections. The specifications shall be consistent with those required in 40 CFR Part 51 Appendix B subpart S and shall include, but are not limited to, operation by internal computer controlled logic, automatic data collection, service and maintenance requirements for replacement or loan analyzers and warranty for the period of an agreement with the station. The VEGAS shall be able to perform an on-board diagnostic test, a pressurized gas cap test, an idle mode test and an unloaded 2500 RPM test. The VEGAS shall provide second chance capabilities for the idle mode and 2500 RPM tests. The specifications shall be described in a separate document and shall be made available by the program upon request. A list of vendors for the approved VEGAS will be available at VPMD Headquarters.

B. The program manager will establish specifications for the exhaust gas analytical and sampling system portion of the approved VEGAS. The program manager will determine the manufacturers' compliance with the revisions and additions to the specifications necessary for use of the instrument within the program area.

C. Applications for approval of vehicle exhaust systems:

(1) Those manufacturers seeking to become a vendor of approved VEGAS shall make application to the program manager on forms provided by the program. Only manufacturers, which can offer an analyzer, which meets the requirements as specified by the program manager, shall be allowed to participate as a vendor.

(2) A manufacturer requesting the approval of an analyzer for the measurement of exhaust gases for use in the program shall make application with the program manager on forms provided by the Program. All manufacturers making application shall meet the applicable technical specifications and administrative requirements specified by the program manager prior to approval.

D. Working span gases:

(1) **General:** The VEGAS manufacturer and its designated marketing vendors shall, on request, supply span gases approved by the program to any ultimate purchaser of its unit. The VEGAS manufacturer shall also provide the analyzer purchaser with a comprehensive, up-to-date list with addresses and phone numbers of NIST approved gas blenders. Each new or used VEGAS sold or leased by the instrument manufacturer or marketing vendor shall have a full span gas container installed and operational at time of delivery if the VEGAS is designed to incorporate an integral span gas supply.

(2) **Span gas blends:** The span gas concentrations supplied with VEGAS used by certified *air care* stations shall conform to the specifications developed pursuant to this subsection.

E. VEGAS performance characteristics:

(1) Optical correction factor sometimes referred to as "C" factor or "propane to hexane conversion factor": Each approved VEGAS shall be permanently labeled with its correction factor, carried to at least two decimal places. Factor confirmation shall be made on each assembled VEGAS by measuring both N-hexane and propane on assembly line quality checks.

(2) **Changes and equipment updates:** No changes in design or performance characteristics of component specifications which may affect VEGAS performance will be allowed without the

~~program manager's approval. It will be the VEGAS manufacturer's responsibility to confirm that such changes have no detrimental effect on VEGAS performance. All approved VEGAS shall be updated as needed and specified in the specifications document.~~

~~**F. Documentation, logistics and warranty requirements:** An instruction manual shall accompany each VEGAS and shall contain at least the following:~~

~~(1) complete technical description,~~

~~(2) functional schematics (mechanical and electrical),~~

~~(3) accessories and options,~~

~~(4) model number, identification markings and location,~~

~~(5) operating maintenance to include recommended periodic cycles and procedure for maintaining sample system integrity (leaks, hang-up, calibration, filters, etc.),~~

~~(6) required service schedule, identifying the items needing maintenance and the procedures to be followed by the purchaser or lessor. The services to be performed only by the manufacturer shall be clearly identified,~~

~~(7) warranty provisions to include listing of warranty repair stations by name, address, and phone number, and~~

~~(8) the name, address, and phone number of the permanent southwestern regional representative(s) for training, service, and warranties.~~

~~**G. Calibration of approved VEGAS:** Certified *air care* stations and all others participating in this program shall abide by this subsection in the calibration and spanning of VEGAS. Span gases and containers shall meet the following parameters, blends and specifications:~~

~~(1) **span and calibration gases:** The operator of a certified *air care* station shall be responsible to assure that span gases used in approved VEGAS conform to the following:~~

~~(a) All span gases supplied to stations shall be named using EPA recommended naming practices.~~

~~(b) The carrier gas shall be nitrogen; the hydrocarbon gas shall be propane. Three component (HC, CO, CO_2 and carrier) gases will be provided.~~

~~(c) The concentration(s) of the span gas blend shall be within limits established by the program to provide for uniform VEGAS spanning.~~

~~(d) The accuracy of the certified *air care* station span gas blend shall be certified by the blender to be ± (plus-or-minus) 2% of labeled concentration and traceable to the NIST. Only gas blends supplied by the program's approved blenders shall be used with the approved VEGAS.~~

~~(e) Certified *air care* stations shall gas calibrate the approved VEGAS once each 72 hours as determined by the instrument or as needed in order to maintain accuracy.~~

~~(f) All approved VEGAS shall be calibrated only with span gases bearing a program approved label.~~

~~(2) **Accuracy:** A gas supplier shall initially demonstrate to the program its qualifications as a vendor of span gases. The program may require additional evidence of qualifications at periodic intervals. All gas suppliers will be required to abide by the "approved span gas verification program" established by the VPMP.~~

~~(3) **Containers:** Span gases shall be supplied in containers which meet all the applicable provisions of the occupational safety and health administration (OSHA).~~

~~(4) **Additional requirements:** Additional specifications related to calibration requirements are described in the VEGAS specifications document.~~]

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.25 NMAC - Rn, 20 NMAC 11.100.II.14, 10/1/02; A, 5/1/04; Repealed, 1/1/12]

20.11.100.31 ENFORCEMENT AGAINST *AIR CARE* STATIONS AND INSPECTORS:

A. If a VPMD program manager or a compliance auditor finds a condition or practice that violates any requirement of 20.11.100 NMAC, VPMD may take any enforcement action or combination of actions it finds necessary, including, but not limited to: a written warning, a notice of violation, a letter denying recertification, a notice of intent to suspend or revoke an active certification, or immediate lockout of the gas analyzer.

B. Violations for which the program manager or VPMD personnel may take action under 20.11.100.31 NMAC include:

(1) any act or omission by an *air care* station or an *air care* inspector that causes the station or inspector to be in violation of any applicable requirement of 20.11.100 NMAC;

(2) an *air care* station or inspector taking or performing any action prohibited under 20.11.100.16 NMAC as determined by any type of investigation by VPMD, such as an overt or covert audit, or VID analysis; and

(3) any other act or omission by a station or inspector that results in a situation that does not comply with 20.11.100 NMAC.

C. An enforcement action may be issued to an *air care* station or *air care* inspector by first class mail, hand delivery by VPMD personnel or electronically through the EIS.

D. The program manager may issue a notice of violation to the *air care* station for acts or omissions by an *air care* inspector at the *air care* station regardless of whether VPMD has issued a notice of violation to the air care inspector who committed the violation.

E. A notice of violation or warning issued pursuant to 20.11.100 NMAC, shall be in writing on an approved VPMD form and shall specify whether the notice of violation is issued to the inspector or the station. The notice shall include notification of the penalty points assessed for the violation and the total penalty points the *air care* station or inspector has accumulated during the preceding 12-month period.

[20.11.100.31 NMAC - N, 1/1/12]

20.11.100.32 CATEGORIES OF VIOLATIONS: The program manager, supervisor or VPMD auditor shall review each notice of violation for consistency with 20.11.100 NMAC and determine the character and category of the violation for the purpose of assessing penalty points, monetary penalties or taking other enforcement action.

A. Intentional violations. An intentional violation is a violation that is the result of actions that are reckless, deliberate or purposeful or that occur when the person who committed the act or omission knew or should have known the conduct was a violation of 20.11.100 NMAC.

B. Serious violations. Serious violations are actions that occur as a result of inspector error, which includes an omission, and are likely to result in inaccurate test results.

C. Minor violations are common errors that can be prevented by diligence and care.

[20.11.100.32 NMAC - N, 1/1/12]

20.11.100.33 PENALTY ASSESSMENT:

A. Penalty points may be assessed against the *air care* inspector, *air care* station or both. Penalty points are tracked for each *air care* station and each *air care* inspector throughout a rolling 12 month period.

B. Violations committed during an inspection shall be assessed against the air care inspector.

C. Program violations, such as allowing or requiring an inspector to perform an improper test or allowing a non-certified individual to perform part or all of a test; improper filing and storage of program documents, or improperly posted signs, shall be assessed against the station.

D. Air care stations may be held responsible for their inspectors' actions if evidence establishes that the inspector violations occurred due to lack of diligence or supervision by the *air care* station owner

or operator.

E. Intentional violations.

(1) Each intentional violation may result in the issuance of up to 16 points for each occurrence.

(2) 16 points shall result in a suspension or revocation of certification, as appropriate, for the *air care* inspector and the *air care* station at which the violations occurred.

(3) When an intentional violation results in a false pass, the *air care* station or inspector may be assessed a monetary penalty equal to 2.5 times the estimated cost of repair of the vehicle, according to the industry flat rate book.

(4) When the intentional violation results in a false fail, the *air care* station or inspector may be assessed a monetary penalty of up to $1,000.

F. Serious violations.

(1) Each serious violation shall be assessed four points for each occurrence.

(2) A serious violation shall require the station to refund the test fee and provide a free retest to the vehicle owner or designee.

(3) A serious violation may also result in a mandatory conference at the VPMD headquarters to discuss the violation and how to assure that there will be no future repetition of the problem. The results of the conference shall be documented and may include a commitment by the station or inspector or both to complete additional training. The program manager or designee may agree to vacate points if commitments are completed successfully and in a timely manner. Mandatory conferences shall be scheduled and held at the VPMD headquarters.

G. Minor violations: Each minor violation shall be assessed two points. Minor violations shall result in formal written notices of violation.

[20.11.100.33 NMAC - N, 1/1/12]

20.11.100.34 HISTORY OF VIOLATIONS:

A. If the program manager determines that an air care station or air care inspector has a history of violations, the level of enforcement or penalty assessment may be increased for any future violations. The program manager shall not be limited to considering the immediately-preceding 12-month period to determine whether a history of violations exists.

B. When violations continue to occur at an *air care* station or by an *air care* inspector following previous enforcement actions, the program manager may issue a more severe enforcement action, including but not limited to: issuing a notice of violation instead of a written warning for a minor violation, or issuing an intent to revoke or suspend a certification for a non-minor violation that is the latest violation in a history of violations.

C. When violations continue to occur at an *air care* station or by an *air care* inspector following previous enforcement actions, the program manager may assess more severe penalties or a greater number of penalty points as a result of an *air care* station or *air care* inspector committing additional errors or violations.

D. Significant accumulation of penalty points shall result in an enforcement action described in 20.11.100.35 NMAC.

[20.11.100.34 NMAC - N, 1/1/12]

~~[20.11.100.26]~~ 20.11.100.35 ~~[DISCIPLINARY]~~ ENFORCEMENT ACTION, DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATIONS:

A. The program manager is authorized, after reasonable investigation and showing of a violation of any [~~provisions~~] provision of [~~this regulation~~] 20.11.100 NMAC, to take [~~disciplinary~~] enforcement actions including monetary penalties [~~and/or~~] and denial, suspension or revocation of certification to operate under the program as a certified *air care* station[~~, certified fleet *air care* station,~~] or certified *air care* inspector [~~or certified *air care* technician~~]. In deciding on an appropriate action, the program manager may consider: past violations on file against the charged party, previous actions [~~which~~] that may have been taken by the program against the charged party, settlement or consent agreements [~~which~~] that document past violations, and judicial decisions if related to the requirements of [~~this part to the procedures manual, or other program guidelines or requirements~~] 20.11.100 NMAC.

B. Notwithstanding the provisions of Subsection C of [~~20.11.100.26~~] 20.11.100.35 NMAC, the program manager may immediately suspend or revoke the certification of a certified *air care* station[~~, certified fleet *air care* station,~~] or certified *air care* inspector [~~or certified *air care* technician~~] if the program manager determines that continued operation as an *air care* station[~~, fleet *air care* station,~~] or *air care* inspector [~~or *air care* technician~~] would jeopardize the public health, safety and welfare; violate [~~the VPMP *procedures manual* or this part~~] 20.11.100 NMAC or compromise the program.

C. **[**~~Prior to~~] Before taking any action to suspend or revoke a certification, the program manager shall inform the inspector [~~technician~~] or station owner of the charges. Any party so informed may request a hearing on the merits before the program manager. [~~Such~~] The request [~~must~~] shall be made in writing to the program manager within 15 consecutive days [~~of receipt of~~] after receiving the notice of intent to suspend or revoke the certification.

D. Upon receipt of a written request for a hearing on the merits, the program manager shall set a date, time and place for the hearing no more than 60 consecutive days from the date of receipt of the request. No fewer than 15 consecutive days before the hearing, the program manager shall inform the charged party of the date, time and place of the hearing. The program manager may appoint a hearing officer. At the hearing, the charged party may demonstrate why a monetary penalty should not be imposed [~~and/or~~] and the certification should not be suspended or revoked. The hearing officer shall provide findings of fact, conclusions of law and a written recommendation to the program manager based on the evidence presented at the hearing.

E. [~~At~~] After the hearing on the merits, based on the findings of the initial investigation and the [~~evidence presented at the hearing~~] recommendation of the hearing officer, the program manager[~~, with the approval of the environmental health department director, may~~] shall take appropriate action including but not limited to any one or a combination of the following: monetary penalty, suspension or revocation of the certification or dismissal of the charges. The program manager may [~~issue~~] impose monetary penalties as authorized by the City of Albuquerque and [~~the~~] Bernalillo County Joint Air Quality Control Board Ordinances, the City of Albuquerque and Bernalillo County Motor Vehicle Emissions Control Ordinances and the New Mexico Air Quality Control Act. The program manager may consider past violations on file against the charged party, previous actions [~~which~~] that may have been taken by the program against the charged party, settlement or consent agreements [~~which~~] that document past violations and judicial decisions if related to the requirements of [~~this part to the procedures manual, or other program guidelines or requirements~~] 20.11.100 NMAC.

F. After a hearing specified by 20.11.100.35 NMAC, any party whose application for certification is denied or certificate is suspended or revoked may appeal the decision of the program manager to the board. To perfect the appeal to the board, the appellant [~~must~~] shall deliver a written request to the headquarters within 15 consecutive days after receipt of the program manager's decision. At the next regular meeting of the board, the program manager shall inform the board [~~at the next regular meeting of the board~~] that an appeal has been filed. The board may make its determination based on the record or may require a hearing de novo. If the board decides on a hearing de novo, the petitioner shall pay a fee of

$125.00 pursuant to Subsection C of 20.11.2.22 NMAC by the deadline established by the board. A hearing de novo shall be held in accordance with 20.11.81 NMAC. The board may uphold, overturn or amend the program manager's decision. If the board decides to conduct a hearing de novo, the board may appoint a hearing officer, and the board shall set a date, time and place for the hearing and shall hold the hearing within 90 consecutive days of the headquarters' receipt of the written request. No fewer than 15 consecutive days before the hearing, the board shall inform the appellant of the date, time and place of the hearing. The decision of the board shall be final.
[20.11.100.35 NMAC - Rn & A, 20.11.100.26 NMAC, 1/1/12]

[20.11.100.27 ENFORCEMENT:] 20.11.100.36 ADDITIONAL ENFORCEMENT AUTHORITY:

A. Mandatory inspections: Any person who owns a motor vehicle subject to [this part] 20.11.100 NMAC and fails to demonstrate compliance with [this part] 20.11.100 NMAC shall be issued a failing VIR and shall be refused re-registration by the MVD pursuant to the Motor Vehicle Code, 66-3-7.1 NMSA (1978).

B. Procedural provisions: Any person who violates the requirements of [this part] 20.11.100 NMAC shall be guilty of a misdemeanor pursuant to either the City of Albuquerque Joint Air Quality Control Board Ordinance 9-15-1-99(B)(1) R.O.1994 or the Bernalillo County Joint Air Quality Control Board Ordinance No. 94-5. Any person who violates a requirement of [this regulation also] 20.11.100 NMAC shall also be subject [both] to all other enforcement actions authorized by the Air Quality Control Act, 74-2-1 et. seq., NMSA 1978 and [all] other remedies available at law or equity.

C. Referral for further investigation or legal remedy. In addition to suspension or revocation of certification and monetary penalties, cases that involve an intentional violation may be referred to the attorney general, district attorney or city attorney, as appropriate, for further investigation of fraudulent acts or other acts contrary to law.
[20.11.100.36 NMAC - Rn & A, 20.11.100.27 NMAC, 1/1/12]

[20.11.100.28 ADMINISTRATIVE FEES FOR CERTIFICATIONS: Any person seeking certification, or annual renewal thereof, to participate in the program as an *air care* station, inspector or technician shall remit to the city the appropriate fee as indicated below before a certification shall be issued or renewed by the program.

Certifications	Amount
Certified *Air Care* Station	$200.00
Certified *Air Care* Inspector	$35.00
Certified *Air Care* Technician	$35.00]

[5/20/88; 20.11.100.28 NMAC - Rn, 20 NMAC 11.100.II.17, 10/1/02; Repealed, 1/1/12]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

ADMINISTRATIVE SERVICES DIVISION

This is an amendment to 8.8.3 NMAC, Sections 2, 6 through 12, 14 and 16, effective May 31, 2011.

8.8.3.2 SCOPE: This rule has general applicability to operators, volunteers, including student interns, staff and employees, and prospective operators, staff and employees, of child-care facilities, including every facility, CYFD contractor, program receiving CYFD funding or reimbursement, the administrative office of the courts (AOC) supervised visitation and safe exchange program, or other program that has or could have primary custody of children for twenty hours or more per week, juvenile treatment facilities, and direct providers of care for children in including, but not limited to the following settings: Children's behavioral health services and licensed and registered child care, including shelter care.
[8.8.3.2 NMAC - Rp, 8.8.3.2 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11]

8.8.3.6 OBJECTIVE:

A. The purpose of these regulations is to set out general provisions regarding background checks and employment history verification required [by the children, youth and families department] in settings to which these regulations apply.

B. Background checks are conducted in order to identify information in applicants' backgrounds bearing on whether they are eligible to provide services in settings to which these regulations apply.

C. Abuse and neglect screens are conducted by licensing authority staff in order to identify those persons who pose a continuing threat of abuse or neglect to [minors or adults] care recipients in settings to which these regulations apply.
[8.8.3.6 NMAC - Rp, 8.8.3.6 NMAC, 03/31/06; A 07/31/09; A, 05/31/11]

8.8.3.7 DEFINITIONS:

A. AOC means administrative office of the courts.

[A.] B. ADMINISTRATIVE REVIEW means an informal process of reviewing a decision that may include an informal conference or hearing or a review of written records.

[B.] C. ADMINISTRATOR means the adult in charge of the day-to-day operation of a facility. The administrator may be the licensee or an authorized representative of the licensee.

[C.] D. ADULT means a person who has a chronological age of 18 years or older, except for persons under medicaid certification as set forth in Subsection [I] J below.

[D.] E. APPEAL means a review of a determination made by the children, youth and families department, which may include an administrative review.

[E.] F. APPLICANT means any person who is required to obtain a background check under these rules and NMSA 1978, Section 32A-15-3 [(1999)].

[F.] G. ARREST means notice from a law enforcement agency about an alleged violation of law.

[G.] H. BACKGROUND CHECK means a screen of the department's information databases, state and federal criminal records and any other reasonably reliable information about an applicant.

[H.] I. CARE RECIPIENT means any person under the care of a licensee.

[I.] J. CHILD means a person who has a chronological age of less than 18 years, and persons under applicable medicaid certification up to the age of 21 years.

[J.] K. CONDITIONAL EMPLOYMENT means a period of employment status for a new applicant prior to the licensing authority's final disposition of the applicant's background check.

[K.] L. CRIMINAL HISTORY means information possessed by law enforcement agencies of arrests, indictments, or other formal charges, as well as dispositions arising from these charges.

[L.] M. DIRECT, PHYSICAL SUPERVISION means continuous visual contact or live video observation by a direct provider of care who has been found eligible

by a background check of an applicant during periods when the applicant is in immediate physical proximity to care recipients.

[~~M.~~] N. DIRECT PROVIDER OF CARE means any individual who, as a result of employment or, contractual service or volunteer service has direct care responsibilities or potential unsupervised physical access to any care recipient in the settings to which these regulations apply.

O. ELIGIBILITY means the determination that an applicant does not pose an unreasonable risk to care recipients after a background check is conducted.

[~~N.~~] P. EMPLOYMENT HISTORY means a written summary of the most recent three-year period of employment with names, addresses and telephone numbers of employers, including dates of employment, stated reasons for leaving employment, and dates of all periods of unemployment with stated reasons for periods of unemployment, and verifying references.

[~~O.~~] Q. LICENSED means authorized to operate by the children, youth and families department by issuance of an operator's license or certification certificate.

[~~P.~~] R. LICENSEE means the holder of, or applicant for, a license, certification, or registration pursuant to 7.20.11 NMAC, 7.20.12 NMAC, 8.16.2 NMAC, 7.8.3 NMAC; 8.17.2 NMAC or other program or entity within the scope of these regulations, including AOC supervised visitation and safe exchange program providers. CYFD LICENSEE means program or entity within the scope of these regulations except the AOC supervised visitation and safe exchange program providers.

[~~Q.~~] S. LICENSING AUTHORITY means the children, youth and families department.

[~~R.~~] T. MORAL TURPITUDE means an intentional crime that is wanton, base, vile or depraved and contrary to the accepted rules of morality and duties of a person within society. In addition, because of the high risk of injury or death created by, and the universal condemnation of the act of driving while intoxicated, a crime of moral turpitude includes a second or subsequent conviction for driving while intoxicated or any crime involving the use of a motor vehicle, the elements of which are substantially the same as driving while intoxicated. The record name of the second conviction shall not be controlling; any conviction subsequent to an initial one may be considered a second conviction.

[~~S.~~] U. RELEVANT CONVICTION means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term RELEVANT CONVICTION also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under NMSA 1978, Section 31-20-13 (1994), or NMSA 1978, Section 30-31-28 (1972), or a comparable provision of another state's law, is not a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court. The term RELEVANT CONVICTION does not include any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective pardon for the conviction. The burden is on the applicant to show that the applicant has a pending or successful completion of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

[~~T.~~] V. UNREASONABLE RISK means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients.

[8.8.3.7 NMAC - Rp, 8.8.3.7 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11]

8.8.3.8 APPLICABILITY: These regulations apply to all licensees and direct providers of care in the following settings:

A. behavior management skills development;

B. case management services;

C. group home services;

D. day treatment services;

E. residential treatment services;

F. treatment foster care services agency staff;

G licensed child care homes;

H. licensed child care centers;

I. registered child care homes;

J. licensed shelter care;

K. licensed before and after school care;

L. non-licensed or exempt after school programs participating in the at risk component of the child and adult care food program;

M. comprehensive community support services;

N. CYFD contractors and any other programs receiving CYFD funding or reimbursement; and

O. AOC supervised visitation and safe exchange program providers.

[8.8.3.8 NMAC - Rp, 8.8.3.8 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11]

8.8.3.9 NON-APPLICABILITY:

A. These regulations do not apply to the following settings, except when otherwise required by applicable Certification Requirements for Child and Adolescent Mental Health Services 7.20.11 NMAC or to the extent that such a program receives funding or reimbursement from CYFD:

(1) hospitals or infirmaries;

(2) intermediate care facilities;

(3) children's psychiatric centers;

(4) home health agencies;

(5) diagnostic and treatment centers;

(6) unlicensed or unregistered child care homes.

B. These regulations do not apply to the following adults:

(1) treatment foster care parents;

(2) relative care providers who are not otherwise required to be licensed or registered;

(3) foster grandparent volunteers;

(4) volunteer parents of [~~an enrolled child~~] a care recipient if the parent is under direct physical supervision;

(5) all other volunteers [~~at a licensed or registered facility~~] for any program or entity within the scope of these regulations if the volunteer spends less than six hours per week at the [~~facility~~] program, is under direct physical supervision, and is not counted in the facility ratio.

[8.8.3.9 NMAC - Rp, 8.8.3.9 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11]

8.8.3.10 COMPLIANCE:

A. Compliance with these regulations is a condition of licensure, registration, certification or renewal, or continuation of same or participation in any other program or contract within the scope of these regulations.

B. The licensee is required to:

(1) submit two completed FBI-approved fingerprint cards for all direct providers of care by the end of the next day following of commencement of service, whether employment or, contractual, or volunteer; EXCEPTION: In the case of licensed child care homes, the licensee must submit fingerprint cards, within five working days, for any adult who resides in the home or any persons residing in the home who reaches 18 years of age;

(2) submit the FBI-approved fingerprint cards to CYFD along with the specified fee;

(3) submit the name, address, date of birth and any aliases of the direct

care provider for a child abuse and neglect screen;

(4) verify the employment history of any [~~potential~~] prospective direct provider of care [~~the verification shall include~~] by contacting references and prior employers/ agencies to elicit information regarding the reason for leaving prior employment or service; the verification shall be documented and available for review by the licensing authority; EXCEPTION: verification of employment history is not required for registered home providers, child care homes licensed for six (6) or fewer children, or relative care providers;

(5) submit an adult household member written statement form for each adult household member in a registered home setting in order to conduct criminal history and child abuse and neglect screens on such household members; an adult household member is an adult living in the household or an adult that spends a significant amount of time in the home;

(6) provide such other information department staff determines to be necessary; and

(7) maintain documentation of all applications, correspondence and [~~clearances~~] eligibility relating to the background checks required; in the event that the licensee does not have a copy of an applicant's [~~clearance~~] eligibility documentation and upon receipt of a written request for a copy, the department may issue duplicate [~~clearance~~] eligibility documentation to the original licensee[~~;~~] provided that the request for duplicate [~~clearance~~] eligibility documentation [~~must be~~] is made within one year of the applicant's [~~clearance~~] eligibility date.

C. If there is a need for any further information from an applicant at any stage of the process, the department shall request the information in writing from the applicant. If the department does not receive the requested information within fifteen calendar days of the date of the request, the department shall deny the application and send a notice of background check denial.

[8.8.3.10 NMAC - Rp, 8.8.3.10 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11]

8.8.3.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing services prior to obtaining [~~a~~] background check eligibility unless all of the following requirements are met:

(1) the CYFD licensee may not be operating under a corrective action plan (childcare), sanctions, or other form of [~~licensing disciplinary serious violations~~] disciplinary action;

(2) until receiving background eligibility the applicant shall at all times be under direct physical supervision; this provision does not apply to registered child care home applicants;

(3) by the end of the next day after the applicant begins providing supervised services, the licensee or applicant shall send the licensing authority a completed application form and fingerprint cards; and

[~~(4) within fifteen days after the applicant begins providing services, the applicant shall provide the licensing authority with all information necessary for the background check; and~~]

[~~(5)~~] (4) no more than 45 days shall have passed since the date of the initial application unless the department documents good cause shown for an extension.

B. If a direct provider of care has a break in employment or transfers employment more than 180 days after the date of an eligibility letter from the licensing authority, the direct [~~care~~] provider of care must re-comply with 8.8.3.10 NMAC. A direct [~~care~~] provider of care may transfer employment for a period of 180 days after the date of an eligibility letter from the licensing authority without complying with 8.8.3.10 NMAC only if the direct [~~care~~] provider of care submits a preliminary application that meets the following conditions:

(1) the direct provider of care submits a statement swearing under penalty of perjury that he or she has not been arrested or charged with any crimes, has not been an alleged perpetrator of abuse or neglect and has not been a respondent in a domestic violence petition;

(2) the direct [~~care~~] provider of care submits an application that describes the prior and subsequent places of employment, registration or certification with sufficient detail to allow the licensing authority to determine if further background checks or a new application is necessary; and

(3) the licensing authority determines within 15 days that the direct [~~care provider's~~] provider of care's prior background check is sufficient for the employment or position the direct [~~care~~] provider of care is going to take.

[8.8.3.11 NMAC - Rp, 8.8.3.11 NMAC, 03/31/06; A, 04/15/08; A, 07/31/09; A, 05/31/11]

8.8.3.12 PROHIBITIONS:

A. Any CYFD licensee who violates these regulations is subject to revocation, suspension, sanctions, [~~or~~] denial of licensure, certification, or registration or termination of participation in any other program within the scope of these regulations. AOC supervised visitation and safe exchange program providers will be monitored and sanctioned by the AOC.

B. Licensure, certification, [~~or~~] registration or participation in any other program within the scope of these regulations is subject to receipt by the licensing authority of a satisfactory background check for the licensee or the licensee's administrator.

C. Except as provided in 8.8.3.13 NMAC below, licensure, certification, [~~or~~] registration or participation in any other program within the scope of these regulations may not be granted by the licensing authority if a background check of the licensee or the licensee's administrator reveals an unreasonable risk.

D. A licensee may not retain employment, volunteer service or contract with any direct provider of care for whom a background check reveals an unreasonable risk. The department shall deliver one copy of the notice of unreasonable risk to the facility or program by U.S. mail and to the appropriate [~~licensing~~] staff at the department or the AOC by facsimile transmission or hand delivery.

E. A licensee shall be in violation of these regulations if it retains a direct provider of care for more than ten working days following the mailing of a notice of background check denial for failure to respond by the licensing authority.

F. A licensee shall be in violation of these regulations if it retains any direct provider of care inconsistent with Subsection A of 8.8.3.11 NMAC.

G. A licensee shall be in violation of these regulations if it hires, contracts with, uses in volunteer service, or retains any direct provider of care for whom information received from any source including the direct provider of care, indicates the provider of care poses an unreasonable risk [~~to the department or~~] to care recipients.

H. Any firm, person, corporation, individual or other entity that violates this section shall be subject to appropriate [~~disciplinary action~~] sanctions up to and including immediate emergency revocation of license or registration pursuant to the regulations applicable to that entity or termination of participation in any other program within the scope of these regulations.

[8.8.3.12 NMAC - Rp, 8.8.3.12 NMAC, 03/31/06; A, 07/31/09; A, 05/31/11]

8.8.3.14 UNREASONABLE RISK:

A. The department may, in its discretion, weigh the evidence about an applicant to determine whether the applicant poses an unreasonable risk to [~~the department or~~] care recipients. The department may also consult with legal staff, treatment, assessment or other professionals in the process of determining whether the cumulative weight of credible evidence establishes unreasonable risk.

B. In determining whether an applicant poses an unreasonable risk, the department need not limit its reliance on

formal convictions or substantiated referrals, but nonetheless must only rely on evidence with indicia of reliability such as:

(1) reliable disclosures by the applicant or a victim of abuse or neglect;

(2) domestic violence orders that allowed an applicant notice and opportunity to be heard and that prohibits or prohibited them from injuring, harassing or contacting another;

(3) circumstances indicating the applicant is or has been a victim of domestic violence;

(4) child or adult protection investigative evidence that indicates a likelihood that an applicant engaged in inappropriate conduct but there were reasons other than the credibility of the evidence to not substantiate; or

(5) any other evidence with similar indicia of reliability.

[8.8.3.14 NMAC - N, 03/31/06; A, 07/31/09; A, 05/31/11]

8.8.3.16 APPEAL RIGHTS:

A. Any CYFD licensee who is denied licensure, certification, [~~or~~] registration or is sanctioned or terminated from participation in any program pursuant to these regulations [~~or a previously cleared direct provider of care whose eligibility has been suspended~~] may appeal that decision to the children, youth and families department. A previously cleared direct provider of care whose eligibility has been suspended may appeal that decision to the children, youth and families department. If a CYFD licensee or a previously cleared direct provider of care alleges facts in good faith that demonstrate a conclusion of unreasonable risk will substantially affect a present vested right such as current employment or other similar currently vested rights the CYFD licensee or a previously cleared direct provider of care shall be entitled to a hearing. The request for appeal shall be in writing and the party requesting the appeal shall cause the department to receive it within fifteen days of the date of the department's written notice of a determination of unreasonable risk.

B. Any direct provider of care who is found ineligible after completion of background check may request an administrative review from the children, youth and families department. The request for an administrative review shall be in writing and the party requesting the appeal shall cause the department to receive it within fifteen days of the date of the department's written notice of a determination of unreasonable risk.

C. The administrative review shall be completed by a review of the record by a hearing officer designated by the cabinet secretary. The hearing officer's review is limited to: (1) whether the licensing authority's conclusion of unreasonable risk is supported by any section of these regulations; and (2) whether the applicant has been erroneously identified as a person with a relevant conviction or substantiated referral. The review will be completed on the record presented to the hearing officer and includes the applicant's written request for an administrative review and other relevant evidence provided by the applicant. The hearing officer conducts the administrative review and submits a recommendation to the cabinet secretary no later than 60 days after the date the request for administrative review is received unless the department and the applicant agree otherwise. The appeal that is a hearing under this section shall be pursuant to the department's administrative hearing regulations at 8.8.4 NMAC.

[8.8.3.16 NMAC - Rp, 8.8.3.15 NMAC 03/31/06; A, 07/31/09; A, 05/31/11]

NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS

MUSEUM OF NATURAL HISTORY AND SCIENCE

This is an amendment to 4.53.2 NMAC, Section 8 and addition of Section 9, effective May 31, 2011.

4.53.2.8 PUBLIC ADMISSIONS PRICES:

A. Public admissions prices for the New Mexico museum of natural history and science are as follows:

(1) Adults $7

(2) Seniors (60+) $6

(3) Children (3-12) $4

B. Public admissions prices for the dynatheater located at the New Mexico museum of natural history and science are as follows:

(1) Adults [~~$7~~] $10

(2) Seniors (60+) [~~$6~~] $8

(3) Children (3-12) [~~$4~~] $6

C. Public admissions prices for the museum or off-site location for special traveling exhibits, also known as "blockbuster" exhibits. The prices indicated are "up to" dollar amounts and are as follows:

(1) Adults Up To $5

(2) Seniors (60+) Up To $4

(3) Children (3-12) Up To $2

[~~D. Public admissions prices for the lodestar virtual voyages simulator ride located at the New Mexico museum of natural history and science are as follows:~~

~~(1) Adults $7~~

~~(2) Seniors (60+) $6~~

~~(3) Children (3-12) $4~~]

[~~E.~~] D. Public admissions prices for the [~~lodestar~~] planetarium located at the New Mexico museum of natural history and science are as follows:

(1) Adults $7

(2) Seniors (60+) $6

(3) Children (3-12) $4

[12-12-89, 9-10-96, 10-29-99; 4.53.2.8 NMAC - Rn & A, 4 NMAC 53.2.8, 7/14/2000; A, 8/1/2004; A, 11/18/2006; A, 5/31/2011]

4.53.2.9 FREE ADMISSIONS AND MUSEUM CLOSURES: NMMNHS and the Sandia mountain natural history center (SMNHC) authorize free museum exhibits admission to all New Mexico residents (with proof thereof) the first Sunday of every month. Admission to museum exhibits is free to all veterans (with proof thereof) on November 11th (Veterans Day). The NMMNHS is closed to the public on the following state holidays: Thanksgiving Day, Christmas Day, and New Year's Day.

[4.53.2.9 NMAC - N, 5/31/2011]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

20.3.1 NMAC, Subpart 10, Notices, Instructions and Reports to Workers: Inspections, filed 6/17/1999 is repealed effective 6/30/2011 and replaced by 20.3.10 NMAC, Notices, Instructions and Reports to Workers: Inspections, effective 6/30/2011.

20.3.12 NMAC, Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies, filed 3/15/2004 is repealed effective 6/30/2011 and replaced by 20.3.12 NMAC, Licenses and Radiation Safety Requirements for Well Logging, effective 6/30/2011.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION

CHAPTER 3 RADIATION PROTECTION

PART 10 NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTIONS

20.3.10.1 ISSUING AGENCY: Environmental Improvement Board.

[20.3.10.1 NMAC - Rp, 20 NMAC 3.1.1.100, 6/30/2011]

20.3.10.2 SCOPE: This part establishes requirements for notices, instructions and reports by licensees, registrants and regulated entities to individuals engaged in department-licensed and regulated activities. This includes options available to such individuals in connection with department inspections of licensees or registrants, in order to ascertain compliance with the provisions of the act, rules, orders and licenses issued thereunder. The provisions in this part apply to all

persons who receive, possess, use or transfer sources of radiation licensed by or registered with the department pursuant to 20.3.10 NMAC.
[20.3.10.2 NMAC - Rp, 20 NMAC 3.1.10.1000, 6/30/2011]

20.3.10.3 STATUTORY AUTHORITY: Sections 74-1-9, 74-3-5 and 74-3-9 NMSA 1978.
[20.3.10.3 NMAC - Rp, 20 NMAC 3.1.1.102, 6/30/2011]

20.3.10.4 DURATION: Permanent.
[20.3.10.4 NMAC - Rp, 20 NMAC 3.1.1.103, 6/30/2011]

20.3.10.5 EFFECTIVE DATE: June 30, 2011, unless a later date is cited at the end of a section.
[20.3.10.5 NMAC - Rp, 20 NMAC 3.1.1.104, 6/30/2011]

20.3.10.6 OBJECTIVE:

A. To ensure the proper instruction of workers in regards to radiological working conditions, and to ensure that adequate notice and reporting is provided to workers regarding radiological working conditions.

B. To provide for the safe possession and use of radioactive materials and radiation machines in keeping with the ALARA principle.

C. To ensure that worker rights are protected during department inspection of regulated entities.
[20.3.10.6 NMAC - Rp, 20 NMAC 3.1.1.105, 6/30/2011]

20.3.10.7 DEFINITIONS:

A. "Regulated activities" means any activity carried on which is under the jurisdiction of the department under the act.

B. "Regulated entities" means any individual, person, organization or corporation that is subject to the regulatory jurisdiction of the department, including but not limited to an applicant for or a holder of a standard design approval or a standard design certification.

C. "Worker" means any individual engaged in activities licensed or regulated by the department and controlled by a licensee or regulated entity, but does not include the licensee or regulated entity.
[20.3.10.7 NMAC- N, 6/30/2011]

20.3.10.8 - 20.3.10.1000 [RESERVED]

20.3.10.1001 POSTING OF NOTICES TO WORKERS:

A. Each licensee or registrant shall post current copies of the following documents:

(1) the regulations in this part and in 20.3.4 NMAC;

(2) the license, certificate of registration, license conditions or documents incorporated into a license by reference and amendments thereto;

(3) the operating procedures applicable to activities under the license or registration; and

(4) any notice of violation involving radiological working conditions, proposed imposition of civil penalty or order issued pursuant to 20.1.5 NMAC, and any response from the licensee or registrant.

B. If posting of a document specified in Subsection A of this section is not practicable, the licensee or registrant may post a notice which describes the document and states where it may be examined.

C. Each licensee or registrant, or each applicant for a specific license, shall promptly post the latest version of department form *notice to employees*.

D. Documents, notices or forms posted pursuant to this section shall appear in a sufficient number of places to permit individuals engaged in department-licensed or regulated activities to observe them on the way to or from any particular licensed or regulated activity location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

E. Documents posted pursuant to Paragraph (4) of Subsection A of this section shall be posted within 2 working days after receipt of the documents from the department; the licensee's or registrant's response, if any, shall be posted within 2 working days after dispatch by the licensee or registrant. Such documents shall remain posted for a minimum of 5 working days or until action correcting the violation has been completed, whichever is later.
[20.3.10.1001 NMAC - Rp, 20 NMAC 3.1.10.1001, 6/30/2011]

20.3.10.1002 INSTRUCTIONS TO WORKERS:

A. All individuals who in the course of employment are likely to receive in a year an occupational dose in excess of 100 millirems (1 millisievert) shall be:

(1) kept informed of the storage, transfer, or use of radiation or radioactive material or both;

(2) instructed in the health protection problems associated with exposure to radiation or radioactive material or both, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(3) instructed in, and required to observe, to the extent within the worker's control, the applicable provisions of department rules and licenses for the protection of personnel from exposure to radiation or radioactive material or both;

(4) instructed of their responsibility to report promptly to the licensee or registrant any condition which may lead to or cause a violation of the act, department rules and licenses; or unnecessary exposure to radiation or radioactive material or both;

(5) instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that may involve exposure to radiation or radioactive material or both; and

(6) advised as to the radiation exposure reports which workers may request pursuant to 20.3.10.1003 NMAC.

B. In determining those individuals subject to the requirements of Subsection A of this section, licensees must take into consideration assigned activities during normal and abnormal situations involving exposure to radiation or radioactive material or both, which can reasonably be expected to occur during the life of a licensed facility. The extent of these instructions must be commensurate with potential radiological health protection problems present in the work place.
[20.3.10.1002 NMAC - Rp, 20 NMAC 3.1.10.1002, 6/30/2011]

20.3.10.1003 NOTIFICATIONS AND REPORTS TO INDIVIDUALS:

A. Radiation exposure data for an individual and the results of any measurements, analyses and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in this section. The information reported shall include data and results obtained pursuant to department rules, orders or license conditions, as shown in records maintained by the licensee or registrant pursuant to department rules. Each notification and report shall:

(1) be in writing;

(2) include appropriate identifying data such as the name of the licensee or registrant, the name of the individual and the individual's identification number, preferably social security number;

(3) include the individual's exposure information; and

(4) contain the following statement: "This report is furnished to you under the provisions of 20.3.10 NMAC. You should preserve this report for further reference."

B. Each licensee or registrant shall make dose information available to workers as shown in records maintained by the licensee under the provisions of 20.3.4.446 NMAC. The licensee or registrant shall provide an annual report to each individual monitored under 20.3.4.417 NMAC of the dose received in that monitoring year if:

(1) the individual's occupational dose exceeds 1 millisievert (100 millirems) TEDE or 1 millisievert (100 millirems) to any individual organ or tissue; or

(2) the individual requests his or her annual dose report.

C. At the request of a worker formerly engaged in department-licensed or regulated activities controlled by the licensee or registrant, each licensee or registrant shall furnish to the worker a written report of the worker's exposure to radiation or radioactive material or both as shown in records maintained by the licensee pursuant to 20.3.4.446 NMAC for each year the worker was required to be monitored under the provisions of 20.3.4.417 NMAC. The report must be furnished within 30 days from the time the request is made, or within 30 days after the exposure of the individual has been determined by the licensee or registrant, whichever is later. This report must cover the period of time that the worker's activities involved exposure to radiation from sources of radiation licensed or regulated by the department and must include the dates and locations of licensed or department-regulated activities in which the worker participated during this period.

D. When a licensee or registrant is required pursuant to 20.3.4.452 NMAC, 20.3.4.453 NMAC or 20.3.4.454 NMAC to report to the department any exposure of an individual to radiation or radioactive material or both; the licensee or the registrant shall also provide the individual a written report on his or her exposure data included in the report to the department. The report must be transmitted no later than the transmittal to the department.

E. At the request of a worker who is terminating employment with the licensee or registrant that involved exposure to radiation or radioactive materials or both, during the current calendar quarter or the current year, each licensee or registrant shall provide at termination to each such worker, or to the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate.

[20.3.10.1003 NMAC - Rp, 20 NMAC 3.1.10.1003, 6/30/2011]

20.3.10.1004 PRESENCE OF REPRESENTATIVES OF LICENSEE OR REGISTRANT AND WORKERS DURING INSPECTION:

A. Each licensee, applicant for a license or registrant shall afford to the department at all reasonable times opportunity to inspect materials, machines, activities, facilities, premises and records pursuant to this chapter.

B. During an inspection, department inspectors may consult privately with workers as specified in 20.3.10.1005 NMAC. The licensee, registrant or their representative may accompany department inspectors during other phases of an inspection.

C. If, at the time of inspection, an individual has been authorized by the workers to represent them during department inspections, the licensee or registrant shall notify the inspectors of such authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

D. Each worker's representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in 20.3.10.1002 NMAC.

E. Different representatives of licensees or registrants, and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one worker's representative at a time may accompany the inspectors.

F. With the approval of the licensee or registrant, and the workers' representative, and individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant, or to the workers' representative, shall be afforded the opportunity to accompany department inspectors during the inspection of physical working conditions.

G. Notwithstanding the other provisions of this section, department inspectors are authorized to refuse to permit accompaniment by any individual who deliberately interferes with a fair and orderly inspection. With regard to any area containing information classified by an agency of the United States government in the interest of national security, an individual who accompanies an inspector may have access to such information only if authorized to do so. With regards to any area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter the area.

[20.3.10.1004 NMAC - Rp, 20 NMAC 3.1.10.1004, 6/30/2011]

20.3.10.1005 CONSULTATION WITH WORKERS DURING INSPECTIONS:

A. Department inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of the department rules and licenses to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

B. During the course of an inspection, any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which the worker has reason to believe may have contributed to or caused any violation of the act, the rules in this chapter or license condition, or any unnecessary exposure of an individual to sources of radiation under the licensee's or registrant's control. Any such notice in writing shall comply with the requirements of 20.3.10.1006 NMAC.

C. The provision of Subsection B of this section shall not be interpreted as authorization to disregard instructions pursuant to 20.3.10.1002 NMAC.

[20.3.10.1005 NMAC - Rp, 20 NMAC 3.1.10.1005, 6/30/2011]

20.3.10.1006 REQUESTS BY WORKERS FOR INSPECTION:

A. Any worker or representative of workers who believes that a violation of the act, the rules in this chapter, or license conditions exists or has occurred in work under a licensee or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the department. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or a representative of the workers. A copy shall be provided to the licensee or registrant by the department no later than at the time of inspection except that, upon the request of the worker giving such notice, such worker's name and the name of individuals referred to therein shall not appear in such copy or on any record published, released or made available by the department, except for good cause shown.

B. If, upon receipt of such notice, the department determines that the complaint meets the requirements set forth in Subsection A of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, the department shall cause an inspection to be made as soon as practicable to determine if such alleged violation exists or has occurred. Inspections pursuant to this section need not be limited to matters referred to in the complaint.

C. No licensee, registrant, contractor or subcontractor of a licensee or registrant shall discharge or in any manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceedings under the provisions of this chapter or has testified or is about to testify

in any such proceeding or because of the exercise by such worker on behalf of such worker or others of any option afforded by this part.
[20.3.10.1006 NMAC - Rp, 20 NMAC 3.1.10.1006, 6/30/2011]

20.3.10.1007 INSPECTIONS NOT WARRANTED: INFORMAL REVIEW:

A. If the department determines with respect to a complaint under 20.3.10.1006 NMAC, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the department shall notify the complainant in writing of such determination. The complainant may obtain review of such determination by submitting a written statement of position with the secretary who will provide the licensee or registrant with a copy of such statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the secretary who will provide the complainant with a copy of such statement by certified mail. Upon the request of the complainant, the secretary may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant will be made only following receipt of written authorization from the complainant. After considering all written or oral views presented, the secretary shall affirm, modify or reverse the determination of the department and furnish the complainant and the licensee or registrant a written notification of the decision and the reason therefore.

B. If the department determines that an inspection is not warranted because the requirements of Subsection A of 20.3.10.1006 NMAC have not been met, the complainant shall be notified in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of Subsection A of 20.3.10.1006 NMAC.
[20.3.10.1007 NMAC - Rp, 20 NMAC 3.1.10.1007, 6/30/2011]

20.3.10.1008 - 20.3.10.1099 [RESERVED]

HISTORY OF 20.3.10 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed as follows:
EIB 73-2, Regulations for Governing the Health and Environmental Aspects of Radiation filed on 7/9/73;
EIB 73-2, Amendment 1, Regulations for Governing the Health and Environmental Aspects of Radiation filed on 4/17/78;
EIB RPR-1, Radiation Protection Regulations filed on 4/21/80; EIB RPR-1, Amendment 1, Radiation Protection Regulations filed on 10/13/81;
EIB RPR-1, Amendment 2, Radiation Protection Regulations filed on 12/15/82; and
EIB RPR-1, Radiation Protection Regulations filed on 3/10/89.

History of Repealed Material: 20 NMAC 3.1.Subpart 10, Notices, Instructions and Reports to Workers: Inspections, filed 6/17/1999 is repealed effective 6/30/2011 and replaced by 20.3.10 NMAC, Notices, Instructions and Reports to Workers: Inspections, effective 6/30/2011.

Other History: EIB RPR 1, Radiation Protection Regulations, filed 3/10/89 renumbered and reformatted to 20 NMAC 3.1, Radiation Materials and Radiation Machines, filed 4/3/95.
20 NMAC 3.1, Radiation Materials and Radiation Machines, filed 6/17/99 internally renumbered and reformatted replaces 20 NMAC 3.1, Radiation Materials and Radiation Machines, filed 4/3/95.
20 NMAC 3.1.Subpart 10, Notices, Instructions and Reports to Workers: Inspections, filed 6/17/1999 is repealed effective 6/30/2011 and replaced by 20.3.10 NMAC, Notices, Instructions and Reports to Workers: Inspections, effective 6/30/2011.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 3 RADIATION PROTECTION
PART 12 LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

20.3.12.1 ISSUING AGENCY: Environmental Improvement Board.
[20.3.12.1 NMAC - Rp, 20.3.12.1 NMAC, 6/30/2011]

20.3.12.2 SCOPE: The regulations in this part apply to all licensees who use sources of radiation for well logging service operations, radioactive markers or subsurface tracer studies in oil, gas, mineral, groundwater or geological exploration.
[20.3.12.2 NMAC - Rp, 20.3.12.2 NMAC, 6/30/2011]

20.3.12.3 STATUTORY AUTHORITY: Sections 74-1-9, 74-3-5, and 74-3-9 NMSA 1978.
[20.3.12.3 NMAC - Rp, 20.3.12.3 NMAC, 6/30/2011]

20.3.12.4 DURATION: Permanent.
[20.3.12.4 NMAC - Rp, 20.3.12.4 NMAC, 6/30/2011]

20.3.12.5 EFFECTIVE DATE: June 30, 2011, unless a later date is cited at the end of a section.
[20.3.12.5 NMAC - Rp, 20.3.12.5 NMAC, 6/30/2011]

20.3.12.6 OBJECTIVE:

A. This part prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers and uranium sinker bars in well logging in a single well. This part also prescribes radiation safety requirements for persons using licensed materials in these operations. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the provisions of 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC and 20.3.10 NMAC apply to applicants and licensees subject to this part.

B. The requirements set out in this part do not apply to the issuance of a license authorizing the use of licensed material in tracer studies involving multiple wells, such as field flooding studies, or to the use of sealed sources auxiliary to well logging but not lowered into wells.
[20.3.12.6 NMAC- Rp, 20.3.12.6 NMAC, 6/30/2011]

20.3.12.7 DEFINITIONS: As used in this part, the following definitions apply.

A. "Energy compensation source" (ECS) means a small sealed source, with an activity not exceeding 100 microcuries (3.7 megabecquerels), used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

B. "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

C. "Fresh water aquifer" means a geologic formation that is capable of yielding fresh water to a well or spring.

D. "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

E. "Irretrievable well logging source" means any sealed source containing licensed material that is pulled off or not connected to the wireline that suspends the source in the well and for which all reasonable effort at recovery has been expended.

F. "Licensed material" means byproduct, source, or special nuclear

material received, processed, used or transferred under a license issued by the department under this chapter.

G. "Logging assistant" means any individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who performs surveys required by 20.3.12.14 NMAC.

H. "Logging supervisor" means the individual who uses licensed material or provides personal supervision in the use of licensed material at a temporary jobsite and who is responsible to the licensee for assuring compliance with the requirements of the department's regulations and the conditions of the license.

I. "Logging tool" means a device used subsurface to perform well logging.

J. "Personal supervision" means guidance and instruction by a logging supervisor, who is physically present at a temporary job−site, who is in personal contact with logging assistants and who can give immediate assistance.

K. "Radioactive marker" means licensed material used for depth determination or direction orientation. For the purposes of this part, this term includes radioactive collar markers and radioactive iron nails.

L. "Safety review" means a periodic review provided by the licensee for its employees on radiation safety aspects of well logging. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, accidents or errors that have been observed and opportunities for employees to ask safety questions.

M. "Sealed source" means any licensed material that is encased in a capsule designed to present leakage or escape of the licensed material.

N. "Source holder" means a housing or assembly into which a sealed source is placed for the purpose of facilitating the handling and use of the source in well logging operations.

O. "Subsurface tracer study" means the release of unsealed licensed material or a substance labeled with licensed material in a single well for the purpose of tracing the movement or position of the material or substance in the well or adjacent formation.

P. "Surface casing for protecting fresh water aquifers" means a pipe or tube used as a lining in a well to isolate fresh water aquifers from the well.

Q. "Temporary job site" means a location where licensed materials are present for the purpose of performing well logging or subsurface tracer studies.

R. "Tritium neutron generator target source" means a tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.

S. "Uranium sinker bar" means a weight containing depleted uranium used to pull a logging tool toward the bottom of a well.

T. "Well" means a drilled hole, in which well logging may be performed. As used in this part, "well" includes drilled holes for the purpose of oil, gas, mineral, groundwater or geological exploration.

U. "Well logging" means all operations involving the lowering and raising of measuring devices or tools which may contain licensed material or are used to detect licensed materials in wells for the purpose of obtaining information about the well or adjacent formations which may be used in oil, gas, mineral, groundwater or geological exploration.

[20.3.12.7 NMAC - Rp, 20.3.12.7 NMAC, 6/30/2011]

20.3.12.8 APPLICATION FOR A SPECIAL LICENSE: A person, as defined in 20.3.1.7 NMAC, shall file an application in duplicate for a specific license authorizing the use of licensed material in well logging on a department prescribed form pursuant to 20.3.3.307 NMAC. The application must be sent to the department for review and approval.

[20.3.12.8 NMAC - N, 6/30/2011]

20.3.12.9 SPECIFIC LICENSES FOR WELL LOGGING: The department will approve an application for a specific license for the use of licensed material in well logging if the applicant meets the following requirements.

A. The applicant shall satisfy the general requirements specified in 20.3.3.308 NMAC and any special requirements contained in this part.

B. The applicant shall develop a program for training logging supervisors and logging assistants and submit to the department a description of this program which specifies the:

(1) initial training;

(2) on-the-job training;

(3) annual safety reviews provided by the licensee;

(4) means the applicant will use to demonstrate the logging supervisor's knowledge and understanding of and ability to comply with the department's regulations and licensing requirements and the applicant's operating and emergency procedures; and

(5) means the applicant will use to demonstrate the logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures.

C. The applicant shall submit to the department written operating and emergency procedures as described in 20.3.12.12 NMAC or an outline or summary of the procedures that includes the important radiation safety aspects of the procedures.

D. The applicant shall establish and submit to the department its program for annual inspections of the job performance of each logging supervisor to ensure that the department's regulations, license requirements and the applicant's operating and emergency procedures are followed. Inspection records must be retained for 3 years after each internal inspection.

E. The applicant shall submit a description of its overall organizational structure as it applies to the radiation safety responsibilities in well logging, including specified delegations of authority and responsibility.

F. If an applicant wants to perform leak testing of sealed sources, the applicant shall identify the manufacturers and the model numbers of the leak test kits to be used. If the applicant wants to analyze its own wipe samples, the applicant shall establish procedures to be followed and submit a description of these procedures to the department. The description must include the:

(1) instruments to be used;

(2) methods of performing the analysis; and

(3) pertinent experience of the person who will analyze the wipe samples.

[20.3.12.9 NMAC- N, 6/30/2011]

20.3.12.10 RETRIEVAL OR ABANDONMENT OF SEALED SOURCES:

A. Agreement with well owner or operator.

(1) A licensee may perform well logging with a sealed source only after the licensee has a written agreement with the employing well owner or operator. This written agreement shall identify who will meet the requirements of Subsections B and C of this section and who will meet the following requirements:

(a) the radiation monitoring requirements of Subsection A of 20.3.12.15 NMAC shall be performed; and

(b) if the environment, any equipment or personnel are contaminated with licensed material, they shall be decontaminated before release from the site or release for unrestricted use.

(2) Recordkeeping. The licensee shall retain a copy of the written agreement for 3 years after the completion of the well logging operation.

(3) A written agreement between the licensee and the well owner or operator

is not required if the licensee and the well owner or operator are part of the same corporate structure or otherwise similarly affiliated. However, the licensee shall still otherwise meet the requirements of Subsections B and C of this section.

B. Retrieval of lodged sealed sources.

(1) If a sealed source becomes lodged in the well, a reasonable effort shall be made to recover it.

(2) A person may not attempt to recover a sealed source in a manner which, in the licensee's opinion, could result in its rupture.

C. Irretrievable sealed sources. If the sealed source is classified as irretrievable after reasonable efforts at recovery have been expended, the licensee shall implement the requirements of this subsection within 30 days.

(1) Each irretrievable well logging source shall be immobilized and sealed in place with a cement plug.

(2) The licensee shall implement means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations.

(3) The licensee shall install a permanent identification plaque, constructed of long lasting material such as stainless steel, brass, bronze or monel, shall be mounted at the surface of the well, unless the mounting of the plaque is not practical. The size of the plaque shall be at least 17 centimeters (7 inches) square and 3 millimeters (1/8 inch) thick. The plaque shall contain:

(a) the word "caution";

(b) the radiation symbol (the color requirement in Subsection A of 20.3.4.427 NMAC need not be met);

(c) the date the source was abandoned;

(d) the name of the well owner or well operator, as appropriate;

(e) the well name and well identification number(s) or other designation;

(f) an identification of the sealed source(s) by radionuclide and quantity;

(g) the depth of the source and depth to the top of the plug; and

(h) an appropriate warning, such as, "do not re-enter this well."

D. A licensee may apply, pursuant to Subsection A of 20.3.1.107 NMAC, for department approval, on a case-by-case basis, of proposed procedures to abandon an irretrievable well logging source in a manner not otherwise authorized in this subsection.

[20.3.12.10 NMAC - Rp, 20.3.12.1203 NMAC, 6/30/2011]

20.3.12.11 TRAINING:

A. Logging supervisor. The licensee may not permit an individual to act as a logging supervisor until that person has met all of the following requirements:

(1) the person has completed training in the subjects outlined in Subsection E of this section;

(2) the person has received copies of, and instruction in:

(a) the department rules contained in the applicable sections of 20.3.4 NMAC, 20.3.10 NMAC and 20.3.12 NMAC;

(b) the department license under which the logging supervisor will perform well logging; and

(c) the licensee's operating and emergency procedures required by 20.3.12.12 NMAC;

(3) the person has completed on-the-job training and demonstrated competence in the use of licensed materials, remote handling tools and radiation survey instruments by a field evaluation; and

(4) the person has demonstrated understanding of the requirements in Paragraphs (1) and (2) of this subsection by successfully completing a written test.

B. Logging assistant. The licensee may not permit an individual to act as a logging assistant until that person has met the following requirements:

(1) the person has received instruction in applicable sections of 20.3.4 NMAC, 20.3.10 NMAC and 20.3.12 NMAC;

(2) the person has received copies of, and instruction in, the licensee's operating and emergency procedures required by 20.3.12.12 NMAC;

(3) the person has demonstrated understanding of the materials listed in Paragraphs (1) and (2) of this subsection by successfully completing a written or oral test; and

(4) the person has received instruction in the use of licensed materials, remote handling tools and radiation survey instruments, as appropriate for the logging assistant's intended job responsibilities.

C. The licensee shall provide safety reviews for logging supervisors and logging assistants at least once during each calendar year.

D. Recordkeeping. The licensee shall maintain a record on each logging supervisor's and logging assistant's training and annual safety review. The training records must include copies of written tests and dates of oral tests. The training records must be retained until 3 years following the termination of employment. Records of annual safety reviews must list the topics discussed and be retained for 3 years.

E. The licensee shall include the following subjects in the training required in Paragraph (1) of Subsection A of this section.

(1) Fundamentals of radiation safety including:

(a) characteristics of radiation;

(b) units of radiation dose and quantity of radioactivity;

(c) hazards of exposure to radiation;

(d) levels of radiation from licensed material;

(e) methods of controlling radiation dose (time, distance, and shielding); and

(f) radiation safety practices, including prevention of contamination, and methods of decontamination.

(2) Radiation detection instruments including:

(a) use, operation, calibration and limitations of radiation survey instruments;

(b) survey techniques; and

(c) use of personnel monitoring equipment.

(3) Equipment to be used including:

(a) operation of equipment, including source handling equipment and remote handling tools;

(b) storage, control and disposal of licensed material; and

(c) maintenance of equipment.

(4) The requirements of pertinent department regulations.

(5) Case histories of accidents in well logging.

[20.3.12.11 NMAC - Rp, 20.3.12.1214 and 20.3.12.1225 NMAC, 6/30/2011]

20.3.12.12 OPERATING AND EMERGENCY PROCEDURES: Each licensee shall develop and follow written operating and emergency procedures that cover the following topics:

A. the handling and use of licensed materials including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;

B. the use of remote handling tools for handling sealed sources and radioactive tracer material except low-activity calibration sources;

C. methods and occasions for conducting radiation surveys, including surveys for detecting contamination, as required by Subsections C through E of 20.3.12.14 NMAC;

D. minimizing personnel exposure including exposures from inhalation and ingestion of licensed tracer materials;

E. methods and occasions for locking and securing stored licensed materials;

F. personnel monitoring and the use of personnel monitoring equipment;

G. transportation of licensed materials to field stations or temporary jobsites, packaging of licensed materials for transport in vehicles, placarding

of vehicles when needed, and physically securing licensed materials in transport vehicles during transportation to prevent accidental loss, tampering or unauthorized removal;

H. picking up, receiving and opening packages containing licensed materials, in accordance with 20.3.4.432 NMAC;

I. for the use of tracers, decontamination of the environment, equipment, and personnel;

J. maintenance of records generated by logging personnel at temporary jobsites;

K. the inspection and maintenance of sealed sources, source holders, logging tools, injection tools, source handling tools, storage containers, transport containers and uranium sinker bars as required by 20.3.12.22 NMAC;

L. actions to be taken if a sealed source is lodged in a well;

M. notifying proper persons in the event of an accident; and

N. actions to be taken if a sealed source is ruptured including actions to prevent the spread of contamination and minimize inhalation and ingestion of licensed materials and actions to obtain suitable radiation survey instruments as required by Subsection B of 20.3.12.17 NMAC.

[20.3.12.12 NMAC - Rp, 20.3.12.1215 and 20.3.12.1218 NMAC, 6/30/2011]

20.3.12.13 PERSONNEL MONITORING:

A. The licensee may not permit an individual to act as a logging supervisor or logging assistant unless that person wears, at all times during the handling of licensed radioactive materials, a personnel dosimeter that is processed and evaluated by an accredited national voluntary laboratory accreditation program (NVLAP) processor. Each personnel dosimeter shall be assigned to and worn by only one individual. Film badges shall be replaced at least monthly and other personnel dosimeters replaced at least quarterly. After replacement, each personnel dosimeter shall be promptly processed.

B. The licensee shall provide bioassay services to individuals using licensed radioactive materials in subsurface tracer studies if required by the license.

C. Recordkeeping. The licensee shall retain records of personnel dosimeters required by Subsection A of this section and bioassay results for inspection until the department authorizes disposition of the records.

[20.3.12.13 NMAC - Rp, 20.3.12.1216 NMAC, 6/30/2011]

20.3.12.14 RADIATION SURVEYS:

A. The licensee shall make radiation surveys, including but not limited to the surveys required under Subsections B through E of this section, of each area where licensed materials are used and stored.

B. Before transporting licensed materials, the licensee shall make a radiation survey of the position occupied by each individual in the vehicle and of the exterior of each vehicle used to transport the licensed materials.

C. If the sealed source assembly is removed from the logging tool before departure from the temporary jobsite, the licensee shall confirm that the logging tool is free of contamination by energizing the logging tool detector or by using a survey meter.

D. If the licensee has reason to believe that, as a result of any operation involving a sealed source, the encapsulation of the sealed source could be damaged by the operation, the licensee shall conduct a radiation survey, including a contamination survey, during and after the operation.

E. The licensee shall make a radiation survey at the temporary jobsite before and after each subsurface tracer study to confirm the absence of contamination.

F. Recordkeeping. The results of surveys required under Subsections A through E of this section must be recorded and must include the date of the survey, the name of the individual making the survey, the identification of the survey instrument used, and the location of the survey. The licensee shall retain records of surveys for inspection by the department for 3 years after they are made.

[20.3.12.14 NMAC - Rp, 20.3.12.1221 NMAC, 6/30/2011]

20.3.12.15 RADIOACTIVE CONTAMINATION CONTROL:

A. If the licensee detects evidence that a sealed source has ruptured or licensed materials have caused contamination, the licensee shall initiate immediately the emergency procedures required by 20.3.12.12 NMAC.

B. If contamination results from the use of licensed material in well logging, the licensee shall decontaminate all work areas, equipment and unrestricted areas.

C. During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with an appropriate radiation detection instrument or a logging tool with a radiation detector, the circulating fluids from the well, if any, to check for contamination resulting from damage to the sealed source.

[20.3.12.15 NMAC - N, 6/30/2011]

20.3.12.16 LABELS, SECURITY AND TRANSPORT PRECAUTIONS:

A. Labels.

(1) The licensee may not use a source, source holder or logging tool that contains licensed material unless the smallest component that is transported as a separate piece of equipment with the licensed material inside bears a durable, legible and clearly visible marking or label. The marking or label must contain the radiation symbol specified in 20.3.4.427 NMAC, without the conventional color requirements, and the wording "Danger (or Caution) radioactive material."

(2) The licensee may not use a container to store licensed material unless the container has securely attached to it a durable, legible and clearly visible label. The label must contain the radiation symbol specified in 20.3.4.427 NMAC and the wording "Danger (or Caution), radioactive material, notify civil authorities (or name of company)."

(3) The licensee may not transport licensed material unless the material is packaged, labeled, marked and accompanied with appropriate shipping papers in accordance with regulations set out in 20.3.3.306 NMAC, incorporating 10 CFR Part 71.

B. Security precautions during storage and transportation.

(1) The licensee shall store each source containing licensed material in a storage container or transportation package. The container or package must be locked and physically secured to prevent tampering or removal of licensed material from storage by unauthorized personnel. The licensee shall store licensed material in a manner which will minimize danger from explosion or fire.

(2) The licensee shall lock and physically secure the transport package containing licensed material in the transporting vehicle to prevent accidental loss, tampering or unauthorized removal of the licensed material from the vehicle.

[20.3.12.16 NMAC - Rp, 20.3.12.1205, 20.3.12.1206, and 20.3.12.1212 NMAC, 6/30/2011]

20.3.12.17 RADIATION SURVEY INSTRUMENTS:

A. The licensee shall keep a calibrated and operable radiation survey instrument capable of detecting beta and gamma radiation at each field station and temporary jobsite to make the radiation surveys required by this part and by 20.3.4 NMAC. To satisfy this requirement, the radiation survey instrument must be capable of measuring 0.001 millisievert (0.1 millirem) per hour through at least 0.5 millisievert (50 millirems) per hour.

B. The licensee shall have available additional calibrated and operable radiation detection instruments

sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source ruptured. The licensee may own the instruments or may have a procedure to obtain them quickly from a second party.

C. The licensee shall have each radiation survey instrument required under this section calibrated:

(1) at intervals not to exceed 6 months and after each instrument servicing;

(2) for linear scale instruments, at two points located approximately 1/3 and 2/3 of full-scale on each scale; for logarithmic scale instruments, and mid-range of each decade, and at two points of at least one decade; and for digital instruments, at appropriate points; and

(3) so that an accuracy within plus or minus 20 percent of the calibration standard can be demonstrated on each scale.

D. Recordkeeping. The licensee shall retain calibration records for a period of 3 years after the date of calibration for inspection by the department.

[20.3.12.17 NMAC - Rp, 20.3.12.1207 NMAC, 6/30/2011]

20.3.12.18 LEAK TESTING OF SEALED SOURCES:

A. Testing and recordkeeping requirements. Each licensee who uses a sealed source of radioactive material shall have the source tested for leakage periodically. Records of leak tests results shall be kept in units of microcuries and maintained for inspection by the department for 3 years after the leak test is performed.

B. Method of testing. The wipe of a sealed source shall be performed using a leak test kit or method approved by the department, NRC or an agreement state. The wipe sample shall be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample shall be analyzed for radioactive contamination. The analysis shall be capable of detecting the presence of 0.005 microcurie (185 becquerels) of radioactive material on the test sample and shall be performed by a person approved by the department, NRC or an agreement state to perform the analysis.

C. Test frequency.

(1) Each sealed source (except an energy compensation source (ECS)) shall be tested at intervals not to exceed 6 months. In the absence of a certificate from a transferor that a test has been made within the 6 months before the transfer, the sealed source may not be used until tested.

(2) Each energy compensation source (ECS) that is not exempt from testing in accordance with Subsection E of this section shall be tested at intervals not to exceed 3 years. In the absence of a certificate from a transferor that a test has been made within the 3 years before the transfer, the energy compensation source (ECS) may not be used until tested.

D. Removal of leaking source from service.

(1) If the test conducted pursuant to Subsections A and B of this section reveals the presence of 0.005 microcurie (185 becquerels) or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired or disposed of by a department, NRC or an agreement state licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by a department, NRC or an agreement state licensee that is authorized to perform these functions.

(2) The licensee shall submit a report to the department within 5 days of receiving the test result. The report must describe the equipment involved in the leak, the test results, any contamination which resulted from the leaking source and the corrective actions taken up to the time the report was made.

E. Exemptions. The following sealed sources are exempt from the periodic leak test requirements set out in Subsections A through D of this section:

(1) hydrogen-3 (tritium) sources;

(2) sources containing licensed material with a half-life of 30 days or less;

(3) sealed sources containing licensed material in gaseous form;

(4) sources of beta- or gamma-emitting radioactive material with an activity of 100 microcuries (3.7 megabecquerels) or less; and

(5) sources of alpha- or neutron-emitting radioactive material with an activity of 10 microcuries (0.370 megabecquerel) or less.

[20.3.12.18 NMAC - Rp, 20.3.12.1208 NMAC, 6/30/2011]

20.3.12.19 PHYSICAL INVENTORY: Each licensee shall conduct a semi-annual physical inventory to account for all licensed material received and possessed under the license. The licensee shall retain records of the inventory for 3 years from the date of the inventory for inspection by the department. The inventory must indicate the quantity and kind of licensed material, the location of the licensed material, the date of the inventory and the name of the individual conducting the inventory. Physical inventory records may be combined with leak test records.

[20.3.12.19 NMAC - Rp, 20.3.12.1209 NMAC, 6/30/2011]

20.3.12.20 RECORDS OF MATERIAL USE:

A. Each licensee shall maintain records for each use of licensed material showing:

(1) the make, model number and serial number or a description of each sealed source used;

(2) in the case of unsealed licensed material used for subsurface tracer studies, the radionuclide and quantity of activity used in a particular well and the disposition of any unused tracer materials;

(3) the identity of the logging supervisor who is responsible for the licensed material and the identity of logging assistants present; and

(4) the location and date of use of the licensed material.

B. Recordkeeping. The licensee shall make the records required by Subsection A of this section available for inspection by the department. The licensee shall retain the records for 3 years from the date of the recorded event.

[20.3.12.20 NMAC - Rp, 20.3.12.1210 NMAC, 6/30/2011]

20.3.12.21 DESIGN AND PERFORMANCE CRITERIA FOR SEALED SOURCES:

A. A licensee may use a sealed source for use in well logging applications if:

(1) the sealed source is doubly encapsulated;

(2) the sealed source contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and

(3) meets the requirements of Subsections B, C and D of this section.

B. For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the requirements of USASI N5.10-1968, classification of sealed radioactive sources, or the requirements in Subsections C and D of this section.

C. For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the oil well logging requirements of ANSI/HPS N43.6-1997, sealed radioactive sources - classification.

D. For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications, if the sealed source's prototype has been tested and found to maintain its integrity after each of the tests in Paragraphs (1) through (5) of this subsection.

(1) Temperature. The test source shall be held at -40 degrees celsius for 20 minutes, 600 degrees celsius for 1 hour, and

then be subject to a thermal shock test with a temperature drop from 600 degrees celsius to 20 degrees celsius within 15 seconds.

(2) Impact test. A 5-kilogram steel hammer, 2.5 centimeters in diameter, shall be dropped from a height of 1 meter onto the test source.

(3) Vibration test. The test source shall be subject to a vibration from 25 hertz to 500 hertz at 5 g (g meaning the acceleration due to gravity) amplitude for 30 minutes.

(4) Puncture test. A 1 gram hammer and pin, 0.3 centimeter pin diameter, shall be dropped from a height of 1 meter onto the test source.

(5) Pressure test. The test source shall be subject to an external pressure of 1.695x107 pascals (24,600 pounds per square inch absolute).

E. The requirements in Subsections A, B, C and D of this section do not apply to sealed sources that contain licensed material in gaseous form.

F. The requirements in Subsections A, B, C and D of this section do not apply to energy compensation sources (ECS). ECSs shall be registered with the sealed source and device registry (see definition in 20.3.1.7 NMAC) upon an approval by the NRC under 10 CFR 32.210 or an agreement state equivalent regulations.
[20.3.12.21 NMAC - Rp, 20.3.12.1211 NMAC, 6/30/2011]

20.3.12.22 INSPECTION, MAINTENANCE AND OPENING OF A SOURCE OR SOURCE HOLDER:

A. Each licensee shall visually check source holders, logging tools and source handling tools, for defects before each use to ensure that the equipment is in good working condition and that required labeling is present. If defects are found, the equipment must be removed from service until repaired, and a record must be made listing: the date of check, name of inspector, equipment involved, defects found and repairs made. These records must be retained for 3 years after the defect is found.

B. Each licensee shall have a program for semiannual visual inspection and routine maintenance of source holders, logging tools, injection tools, source handling tools, storage containers, transport containers and uranium sinker bars to ensure that the required labeling is legible and that no physical damage is visible. If defects are found, the equipment must be removed from service until repaired, and a record must be made listing: date, equipment involved, inspection and maintenance operations performed, any defects found and any actions taken to correct the defects. These records must be retained for 3 years after the defect is found.

C. Removal of a sealed source from a source holder or logging tool, and maintenance on sealed sources or holders in which sealed sources are contained may not be performed by the licensee unless a written operating procedure is developed and has been approved either by the department, NRC or an agreement state.

D. If a sealed source is stuck in the source holder, the licensee may not perform any operation, such as drilling, cutting or chiseling, on the source holder unless the licensee is specifically approved by the department, NRC or an agreement state to perform this operation.

E. The opening, repair or modification of any sealed source must be performed by persons specifically approved to do so by the department, NRC or an agreement state.
[20.3.12.22 NMAC - Rp, 20.3.12.1213 NMAC, 6/30/2011]

20.3.12.23 SUBSURFACE TRACER STUDIES:

A. The licensee shall require all personnel handling radioactive tracer material to use protective gloves and, if required by the license, other protective clothing and equipment. The licensee shall take precautions to avoid ingestion or inhalation of radioactive tracer material and to avoid contamination of field stations and temporary jobsites.

B. A licensee shall not knowingly inject licensed material into fresh water aquifers unless specifically authorized to do so by the department.
[20.3.12.23 NMAC - Rp, 20.3.12.1219 NMAC, 6/30/2011]

20.3.12.24 RADIOACTIVE MARKERS: The licensee may use radioactive markers in wells only if the individual markers contain quantities of licensed material not exceeding the exempt quantities specified in 20.3.3.330 NMAC. The use of markers is subject only to the requirements of physical inventory in 20.3.12.19 NMAC.
[20.3.12.24 NMAC - N, 6/30/2011]

20.3.12.25 URANIUM SINKER BARS: The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words ”Caution - radioactive - depleted uranium” and “Notify civil authorities (or name of company) if found.”
[20.3.12.25 NMAC - Rp, 20.3.12.1200 NMAC, 6/30/2011]

20.3.12.26 USE OF A SEALED SOURCE IN A WELL WITHOUT A SURFACE CASING: The licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure for reducing the probability of the source becoming lodged in the well. The procedure must be approved by the department pursuant to Subsection C of 20.3.12.9 NMAC, the NRC or an agreement state.
[20.3.12.26 NMAC - N, 6/30/2011]

20.3.12.27 ENERGY COMPENSATION SOURCE:

A. The licensee may use an energy compensation source (ECS) which is contained within a logging tool or other tool components, only if the ECS contains quantities of licensed material not exceeding 100 microcuries (3.7 megabecquerels).

B. For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of 20.3.12.18 NMAC, 20.3.12.19 NMAC and 20.3.12.20 NMAC.

C. For well logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of 20.3.12.10 NMAC, 20.3.12.18 NMAC, 20.3.12.19 NMAC, 20.3.12.20 NMAC, 20.3.12.26 NMAC and 20.3.12.32 NMAC.
[20.3.12.27 NMAC - Rp, 20.3.12.1201 NMAC, 6/30/2011]

20.3.12.28 TRITIUM NEUTRON GENERATOR TARGET SOURCE:

A. Use of a tritium neutron generator target source, containing quantities not exceeding 30 curies (1,110 megabecquerels) and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this part except 20.3.12.10 NMAC, 20.3.12.21 NMAC and 20.3.12.32 NMAC.

B. Use of a tritium neutron generator target source, containing quantities exceeding 30 curies (1,110 megabecquerels) or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of this part except 20.3.12.21 NMAC.
[20.3.12.28 NMAC - Rp, 20.3.12.1202 NMAC, 6/30/2011]

20.3.12.29 SECURITY DURING USE OF LICENSED MATERIAL:

A. A logging supervisor must be physically present at a temporary jobsite whenever licensed materials are being handled or are not stored and locked in a vehicle or storage place. The logging supervisor may leave the jobsite in order to obtain assistance if a source becomes lodged in a well.

B. During well logging, except when radiation sources are below ground or in shipping or storage containers, the logging supervisor or other individual designated by the logging supervisor shall maintain direct surveillance of the operation

to prevent unauthorized entry into a restricted area, as defined in 20.3.4.7 NMAC.
[20.3.12.29 NMAC - Rp, 20.3.12.1217 NMAC, 6/30/2011]

20.3.12.30 DOCUMENTS AND RECORDS REQUIRED AT FIELD STATIONS: Each licensee shall maintain the following documents and records at the field station:

A. a copy of 20.3.4 NMAC, 20.3.10 NMAC and 20.3.12 NMAC;

B. the license authorizing the use of licensed material;

C. operating and emergency procedures required by 20.3.12.12 NMAC;

D. the record of radiation survey instrument calibrations required by 20.3.12.17 NMAC;

E. the record of leak test results required by 20.3.12.18 NMAC;

F. physical inventory records required by 20.3.12.19 NMAC;

G. utilization records required by 20.3.12.20 NMAC;

H. records of inspection and maintenance required by 20.3.12.22 NMAC;

I. training records required by 20.3.12.11 NMAC; and

J. survey records required by 20.3.12.14 NMAC.

[20.3.12.30 NMAC - Rp, 20.3.12.1222 NMAC, 6/30/2011]

20.3.12.31 DOCUMENTS AND RECORDS REQUIRED AT TEMPORARY JOBSITES: Each licensee conducting operations at a temporary jobsite shall maintain the following documents and records at the temporary jobsite until the well logging operation is completed:

A. operating and emergency procedures required by 20.3.12.12 NMAC;

B. evidence of latest calibration of the radiation survey instruments in use at the site required by 20.3.12.17 NMAC;

C. latest survey records required by 20.3.12.14 NMAC;

D. the shipping papers for the transportation of radioactive materials required by 20.3.3.306 NMAC, incorporating 10 CFR 71.5; and

E. when operating under reciprocity pursuant to 20.3.3.324 NMAC, a copy of the NRC or agreement state license authorizing use of licensed materials.

[20.3.12.31 NMAC - Rp, 20.3.12.1223 NMAC, 6/30/2011]

20.3.12.32 NOTIFICATION OF INCIDENTS AND LOST SOURCES; ABANDONMENT PROCEDURES FOR IRRETRIEVABLE SOURCES:

A. The licensee shall immediately notify the department by telephone and subsequently, within 30 days, by confirmation in writing, if the licensee knows or has reason to believe that a sealed source has been ruptured. The written confirmation must designate the well or other location, describe the magnitude and extent of the escape of licensed materials, assess the consequences of the rupture, and explain efforts planned or being taken to mitigate these consequences.

B. The licensee shall notify the department of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation and certain other accidents as required by 20.3.4.451 NMAC, 20.3.4.452 NMAC, 20.3.4.453 NMAC and 20.3.3.325 NMAC.

C. If a sealed source becomes lodged in a well, and when it becomes apparent that efforts to recover the sealed source will not be successful, the licensee shall:

(1) notify the department by telephone of the circumstances that resulted in the inability to retrieve the source; and

(a) obtain department approval to implement abandonment procedures; or

(b) that the licensee implemented abandonment before department approval because the licensee believed there was an immediate threat to public health and safety; and

(2) advise the well owner or operator, as appropriate, of the abandonment procedures under Subsection A or D of 20.3.12.10 NMAC; and

(3) either ensure that abandonment procedures are implemented within 30 days after the sealed source has been classified as irretrievable or request an extension of time if unable to complete the abandonment procedures.

D. The licensee shall, within 30 days after a sealed source has been classified as irretrievable, make a report in writing to the department. The licensee shall send a copy of the report to each appropriate local, state or federal agency that issued permits or otherwise approved of the drilling operation. The report must contain the following information:

(1) date of occurrence;

(2) a description of the irretrievable well logging source involved including the radionuclide and its quantity, chemical and physical form;

(3) surface location and identification of the well;

(4) results of efforts to immobilize and seal the source in place;

(5) a brief description of the attempted recovery effort;

(6) depth of the source;

(7) depth of the top of the cement plug;

(8) depth of the well;

(9) the immediate threat to public health and safety justification for implementing abandonment if prior department approval was not obtained in accordance with Subparagraph (b) of Paragraph (1) of Subsection C of this section;

(10) any other information, such as a warning statement, contained on the permanent identification plaque; and

(11) local, state and federal agencies receiving copy of this report.

[20.3.12.32 NMAC - Rp, 20.3.12.1224 NMAC, 6/30/2011]

HISTORY OF 20.3.12 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed as follows:

EIB 73-2, Regulations for Governing the Health and Environmental Aspects of Radiation filed on 7-9-73;

EIB 73-2, Amendment 1, Regulations for Governing the Health and Environmental Aspects of Radiation filed on 4-17-78;

EIB RPR-1, Radiation Protection Regulations filed on 4-21-80;

EIB RPR-1, Amendment 1, Radiation Protection Regulations filed on 10-13-81;

EIB RPR-1, Amendment 2, Radiation Protection Regulations filed on 12-15-82; and

EIB RPR-1, Radiation Protection Regulations filed on 3-10-89.

History of Repealed Material: 20.3.12 NMAC, Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies, filed 3/15/2004 is repealed effective 6/30/2011 and replaced by 20.3.12 NMAC, Licenses and Radiation Safety Requirements for Well Logging, effective 6/30/2011.

Other History: EIB RPR 1, Radiation Protection Regulations, filed 03-10-1989 renumbered and reformatted to 20 NMAC 3.1; Radioactive Materials and Radiation Machines, effective 05-03-1995;

20 NMAC 3.1; Radioactive Materials and Radiation Machines (filed 04-03-1995) internally renumbered, reformatted and replaced by 20 NMAC 3.1, Radioactive Materials and Radiation Machines, effective 07-30-1999.

20 NMAC 3.1.Subpart 12, Radiation Safety Requirements For Wireline Service Operations And Subsurface Tracer Studies (filed 06-17-1999) reformatted, amended and replaced by 20.3.12 NMAC, Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies, effective 04/15/2004.

20.3.12 NMAC, Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies,

filed 3/15/2004 is repealed effective 6/30/2011 and replaced by 20.3.12 NMAC, Licenses and Radiation Safety Requirements for Well Logging, effective 6/30/2011.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.74 NMAC, Sections 7, 300, 303, 306, 403, 502, 503, 504 and 505 effective 6/3/11.

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 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 establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than one microgram per cubic meter (annual average) [~~of the pollutant for which the minor source baseline date is established~~] for sulfur dioxide, nitrogen dioxide, or PM_{10}; or equal or greater than 0.3 microgram per cubic meter (annual average) for $PM_{2.5}$. 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)~~] (A)(ii) or (iii) 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 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.

Z. "High terrain" means any area having an elevation nine hundred (900) feet or more above the base of a source's stack.

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.

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.

AC. "Low terrain" means any area other than high terrain.

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.

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.

AF. "Major source baseline date" means:

(1) in the case of [~~particulate matter~~] PM_{10} and sulfur dioxide, January 6, 1975; [~~and~~]

(2) in the case of nitrogen dioxide, February 8, 1988; and

(3) in the case of $PM_{2.5}$, October 20, 2010.

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.

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.

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~~] PM_{10} and sulfur dioxide, August 7, 1977;[~~and~~]

(b) in the case of nitrogen dioxide, February 8, 1988; and

(c) in the case of $PM_{2.5}$, October 20, 2011.

(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.

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

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.

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.

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.

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

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.

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.

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

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 AR of this section.

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);~~] pollutant identified under this paragraph (Paragraph (1) of Subsection AS of 20.2.74.7 NMAC) as a constituent or precursor to such pollutant; precursors identified by the administrator for purposes of NSR are the following:

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

(b) sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas;

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

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

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

(3) any class I or II substance subject to a standard promulgated under or established by title VI of the act; or

(4) any pollutant that otherwise is subject to regulation under the act 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;

(6) particulate matter (PM) emissions, $PM_{2.5}$ emissions, and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM2.5 and PM10 in PSD permits; compliance with emissions limitations for PM, PM2.5 and PM10 issued prior to this date shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particular matter to be included.

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.

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.

AV. "Secretary" means the cabinet level secretary of the New Mexico environment department or his or her successor.

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).

AX. "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AW of this section) for that pollutant.

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.

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.

BB. "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

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; A, 6/3/11]

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. Except as otherwise provided in Paragraph (6) under this subsection (Subsection E of 20.2.74.300 NMAC), the following specific provisions apply [~~to~~] with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Paragraph (6) under this subsection (Subsection E of 20.2.74.300 NMAC), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection 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 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);

(6) a ''reasonable possibility'' under this subsection (Subsection E of 20.2.74.300 NMAC) occurs when the owner or operator calculates the project to result in either:

(a) a projected actual emissions increase of at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under Subsection AX of 20.2.74.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) a projected actual emissions increase that, added to the amount of emissions excluded under Paragraph (3) of Subsection AR of 20.2.74.7 NMAC, sums to at least 50 percent of the amount that is a ''significant emissions increase,'' as defined under Subsection AX of 20.2.74.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; for a project for which a reasonable possibility occurs only within the meaning under this subparagraph (Subparagraph (b) of Paragraph (6) of Subsection E of 20.2.74.300 NMAC), and not also within the meaning of Subparagraph (a) under this paragraph (Paragraph (6) of Subsection E of 20.2.74.300 NMAC), then the provisions in Paragraphs (2) through (5) under this subsection (Subsection E of 20.2.74.300 NMAC) do not apply to the project.

F. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection E of 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; A, 6/3/11]

20.2.74.303 AMBIENT IMPACT REQUIREMENTS:

A. The requirements of this section shall apply to each pollutant emitted by a new major stationary source or major modification in amounts equal to or greater than those in Table 2 of this Part (20.2.74.502 NMAC). For [~~particulate matter~~] PM_{10}, the source will only be required to perform ambient impact analysis for PM_{10} when the source has the potential to emit significant amounts of PM_{10} (Table 2, 20.2.74.502 NMAC). For $PM_{2.5}$, the demonstration required in Subsection B of 20.2.74.303 NMAC is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than 0.06 micrograms per cubic meter (annual average) and 0.07 micrograms per cubic meter (24-hour average) for Class I federal areas and 0.3 micrograms per cubic meter (annual average) and 1.2 micrograms per cubic meter (24 hour average) for Class II and Class III federal areas.

B. The allowable emission increases from the proposed source or modification, including secondary emissions, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

(1) any national ambient air quality standard in any location; or

(2) any applicable maximum allowable increase as shown in Table 4 of this Part (20.2.74.504 NMAC) over the baseline concentrations in any area;

(3) the owner or operator of the proposed major stationary source or major modification shall demonstrate that neither Paragraph (1) nor Paragraph (2) of 20.2.74.303 NMAC will occur.

[07/20/95; 20.2.74.303 NMAC - Rn, 20 NMAC 2.74.303, 10/31/02; A, 6/3/11]

20.2.74.306 MONITORING REQUIREMENTS:

A. Any application for a permit under this part shall contain an analysis of ambient air quality. Air quality data can be that measured by the applicant or that available from a government agency in the area affected by the major stationary source or major modification. The analysis shall contain the following:

(1) for a major stationary source, each pollutant for which the potential to emit is equal to or greater than the significant emission rates as listed in Table 2 of this part (20.2.74.502 NMAC); or

(2) for a major modification, each pollutant that would result in a significant net emission increase.

B. If no national ambient air quality standard (NAAQS) for a pollutant exists, and there is an acceptable method for monitoring that pollutant, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant.

C. Continuous air quality monitoring data shall be required for all pollutants for which a national ambient air quality standard exists. Such data shall be submitted to the department for at least the one (1) year period prior to receipt of the permit application. The department has the discretion to:

(1) determine that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year but not less than four months; or

(2) determine that existing air quality monitoring data is representative of air quality in the affected area and accept such data in lieu of additional monitoring by the applicant.

D. Ozone monitoring shall be performed if monitoring data is required for volatile organic compounds. Post construction ozone monitoring data may be submitted in lieu of providing preconstruction data as required under Subsection C of 20.2.74.306 NMAC if the owner or operator of the proposed major source or major modification satisfies all the provisions of 40 CFR Part 51, Appendix S, Section IV.

E. The department may require monitoring of visibility in any Class I federal area where the department determines

that an adverse impact on visibility may occur due primarily to the operations of the proposed new source or modification. Such monitoring shall be conducted following procedures approved by the department and subject to the following:

(1) visibility monitoring methods specified by the department shall be reasonably available and not require any research and development; and

(2) the cost of visibility monitoring required by the department shall not exceed fifty percent (50%) of the cost of ambient monitoring required by this part; if ambient monitoring is not required, the cost shall be estimated as if it were required for each pollutant to which this part applies;

(3) both preconstruction and post construction visibility monitoring may be required; in each case, the duration of such monitoring shall not exceed one (1) year.

F. The owner or operator of a major stationary source or major modification shall conduct post construction ambient monitoring as the department determines is necessary to validate attainment of ambient air quality standards and to assure that increments are not exceeded.

G. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR 58, Appendix B during the operation of monitoring stations for purposes of satisfying the requirements of this section.

H. The department has the discretion to exempt a stationary source or modification from the requirements of this section with respect to monitoring for a particular pollutant if the emissions of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, increases in ambient concentrations less than the levels listed in Table 3 of this part (20.2.74.503 NMAC).

I. The department shall exempt a stationary source or modification from the requirements of this section with respect to preconstruction monitoring for a particular pollutant if:

(1) for ozone, volatile organic compound emissions are less than one hundred (100) tons per year; or

(2) the air pollutant is not a regulated pollutant; or

(3) the existing ambient concentrations of the pollutant in the area [~~affected by~~] that the source or modification would affect are less than the concentrations listed in Table 3 of this part (20.2.74.503 NMAC); or

(4) the pollutant is not listed in Table 3 of this part (20.2.74.503 NMAC).

[07/20/95; 20.2.74.306 NMAC - Rn, 20 NMAC 2.74.306, 10/31/02; A, 6/3/11]

20.2.74.403 ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING CLASS I FEDERAL AREAS:

A. The department shall transmit to the administrator and the federal land manager a copy of each permit application relating to a major stationary source or major modification proposing to locate within one hundred (100) kilometers of any Class I federal area. The complete permit application shall be transmitted within thirty (30) days of receipt and sixty (60) days prior to any public hearing on the application. The department shall include all relevant information in the permit application. Relevant information shall include an analysis of the proposed source's anticipated impacts on visibility in the Class I federal area. The department shall consult with all affected federal land managers as to the completeness of the permit application and shall consider any analysis performed by the federal land manager concerning the impact of the proposed major stationary source or major modification on air quality related values. This consideration shall include visibility, if such analysis is received within thirty (30) days after the federal land manager receives a copy of the complete application. Additionally, the department shall notify any affected federal land manager within thirty days (30) from the date the department receives a request for a pre-application meeting from a proposed source subject to this part. Notice shall be provided to the administrator and federal land manager of every action related to the consideration of such permit. The department shall also provide the federal land manager and the administrator with a copy of the preliminary determination required under 20.2.74.400 NMAC and shall make available to them any materials used in making that determination. In any case where the department disagrees with the federal land manager's analysis of source impact on air quality related values, the department shall, either explain its decision or give notice to the federal land manager as to where the explanation can be obtained. In the case where the department disagrees with the federal land managers' analysis, the department will also explain its decision or give notice to the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed, as to where the decision can be obtained.

B. The department shall transmit to air quality control agencies of neighboring states and Indian governing bodies a copy of each permit application having the potential to affect Class I federal areas or increment consumption in areas under their jurisdiction. The department shall also provide the affected air quality control agencies and Indian governing bodies with a copy of the preliminary determination required under 20.2.74.400 NMAC and shall make available to them any materials used in making that determination. The department shall include a provision for a sixty (60) day comment period for the federal land managers before any public hearing on a permit application is held.

C. Federal land managers may demonstrate to the department that emissions from a proposed source or modification would have an adverse impact on air quality related values, including visibility, of any Class I federal lands under their jurisdiction. This may be done even though the change in air quality resulting from emissions from the proposed source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I federal area. If the department concurs with this demonstration, then the source shall not be issued a permit.

D. Class I waivers: The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from a proposed source or modification would have no adverse impact on air quality related values, including visibility, of Class I federal lands under his or her jurisdiction. This may be done even though the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I federal area. If the federal land manager concurs with such demonstration and so certifies to the department, the department may grant a waiver from such maximum allowable increases. Emission limitations must be included in the permit as necessary to assure that emissions of sulfur dioxide, [~~particulate matter~~] PM_{10}, $PM_{2.5}$, and nitrogen oxides would not exceed the maximum allowable increases over minor source baseline concentrations shown in Table 5 of this part (20.2.74.505 NMAC).

E. For the case where the federal land manager does not perform an impact analysis with respect to visibility impairment in a Class I federal area, the department may perform such an analysis. The department shall not issue the source a permit if the department determines that an adverse impact on visibility would occur. The adverse impact must be due, primarily, to the operation of the proposed source or modification.

F. Sulfur dioxide waiver by governor: The owner or operator of a proposed major stationary source or major modification, which cannot be approved under Subsection D of 20.2.74.403 NMAC, may demonstrate to the governor that the source cannot be constructed by reason of an

exceedance of a maximum allowable increase for a Class I federal area for sulfur dioxide for a period of twenty-four (24) hours or less. The owner or operator may also demonstrate that a waiver from this requirement would not adversely affect the air quality related values of the Class I federal area. The governor, after consideration of the federal land manager's recommendation and subject to his concurrence, may, after notice and public hearing, grant a waiver from such maximum allowable increase. If the waiver is granted, the department shall issue a permit to the owner or operator of the source or modification. Any owner or operator of a source or modification who obtains a permit under this section shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases of ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of this part (20.2.74.506 NMAC) for periods of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, in any annual period.

G. Sulfur dioxide waiver by governor with the president's concurrence. In any case where the governor recommends a waiver in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president through the office of the governor. If the president so directs, the department shall issue the permit. Any source or modification that obtains a permit under this section shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases in ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of this part (20.2.74.506 NMAC) for periods of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, in any annual period.

[07/20/95; 20.2.74.403 NMAC - Rn, 20 NMAC 2.74.403, 10/31/02; A, 6/3/11]

20.2.74.502 TABLE 2 - SIGNIFICANT EMISSION RATES:

POLLUTANT	EMISSION RATE (TONS/YR)
Carbon monoxide	100
Fluorides	3
Lead	0.6
Municipal waste combustor	
Acid gases (measured as sulfur dioxide and hydrogen chloride)	40 (36 megagrams/year)
Metals (measured as particulate matter	15 (14 megagrams/year)
Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 (0.0000032 megagrams/yr)
Nitrogen oxides	40
Ozone (Volatile Organic Compounds or nitrogen oxides)	40
Particulate Matter	
Particulate matter emissions	25
PM_{10} emissions	15
Particulate Matter$_{2.5}$	
Direct $PM_{2.5}$ emissions	10
Sulfur dioxide emissions	40
Nitrogen oxide emissions (unless demonstrated not to be a $PM_{2.5}$ precursor under Subsection AS of 20.2.74.7 NMAC)	40
Sulfur compounds	
Hydrogen sulfide (H2S)	10
Reduced sulfur compounds (incl. H2S)	10
Sulfur dioxide	40
Sulfuric acid mist	7
Total reduced sulfur (incl. H2S)	10
Any other pollutant regulated under the act that is not listed in this table	Any emission rate
Each regulated pollutant	Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24-hr average) in any class I federal area located within 10 km of the source.

[07/20/95; 20.2.74.502 NMAC - Rn, 20 NMAC 2.74 Table 2, 10/31/02; A, 1/22/06; A, 8/31/09; A, 6/3/11]

20.2.74.503 TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS.

POLLUTANT	AIR QUALITY CONCENTRATION micrograms per cubic meter	AVERAGING TIME
Carbon monoxide	575	8 hours

Fluorides	0.25	24 hours
Lead	0.1	3 months
Nitrogen dioxide	14	Annual
Ozone	b	
[~~Particulate matter (PM-10)~~] PM_{10}	10	24 hours
$PM_{2.5}$	4	24 hours
Sulfur compounds		
Hydrogen sulfide (H2S)	0.20	1 hour
Reduced sulfur compounds (incl. H2S)	10	1 hour
Sulfur dioxide	13	24 hours
Sulfuric acid mist	a	
Total reduced sulfur (incl. H2S)	10	1 hour
a - No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.		
b - No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.		

[07/20/95; 20.2.74.503 NMAC - Rn, 20 NMAC 2.74 Table 3, 10/31/02; A, 1/22/06; A, 8/31/09; A, 6/3/11]

20.2.74.504 TABLE 4 - ALLOWABLE PSD INCREMENTS:

	Micrograms per cubic meter ($\mu g/m^3$)		
	Class I	Class II	Class III
Nitrogen Dioxide			
annual arithmetic mean	2.5	25	50
Particulate Matter			
PM_{10}, annual arithmetic mean	4	17	34
PM_{10}, 24-hour maximum	8[a]	30[a]	60[a]
$PM_{2.5}$ annual arithmetic mean	1	4	8
$PM_{2.5}$ 24-hour maximum	2[a]	9[a]	18[a]
Sulfur Dioxide			
annual arithmetic mean	2	20	40
24-hour maximum	5[a]	91[a]	182[a]
3-hour maximum	25[a]	512[a]	700[a]
a - Not to be exceeded more than once a year.			

[07/20/95; 20.2.74.504 NMAC - Rn, 20 NMAC 2.74 Table 4, 10/31/02; A, 6/3/11]

20.2.74.505 TABLE 5 - MAXIMUM ALLOWABLE INCREASES FOR CLASS I WAIVERS:

	Micrograms per cubic meter ($\mu g/m^3$)
Nitrogen Dioxide	
annual arithmetic mean	25
Particulate Matter	
PM_{10}, annual arithmetic mean	17
PM_{10}, 24-hour maximum	30
$PM_{2.5}$, annual arithmetic mean	4
$PM_{2.5}$, 24-hour maximum	9
Sulfur Dioxide	

annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

[07/20/95; 20.2.74.505 NMAC - Rn, 20 NMAC 2.74 Table 5, 10/31/02; A, 6/3/11]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.79 NMAC, Sections 7, 109, and 119 effective 6/3/2011.

20.2.79.7 DEFINITIONS. In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part, the following terms apply.

A. "Actual emissions" means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with the following, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limit under 20.2.79.120 NMAC. Instead, Subsections E and AI of this section shall apply for those purposes.

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

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

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

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

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

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

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

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

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

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

(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 noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

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

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

(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 section or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

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

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

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of Subsection D of 20.2.79.115 NMAC.

(d) For a regulated new source review pollutant, when a project involves

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

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

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

(4) For a plantwide applicability limit for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of 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.

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

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

H. "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). 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 two-digit code) as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement (U.S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively).

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

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

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

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

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

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

M. "Continuous parameter monitoring system" (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of 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, oxygen or carbon dioxide concentrations), and to record average operational parameter value(s) on a continuous basis.

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

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

(1) A new emissions unit is any emissions unit which is (or will be) newly constructed and which 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.

P. "Federal class I area" means any Federal land that is classified or reclassified "class I".

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

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

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

opening.

T. "Lowest achievable emission rate" 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.

U. "Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated new source review pollutant (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 oxides of nitrogen shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

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

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

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

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

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

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

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan for the state in which is project is located, and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(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 20.2.79.120 NMAC for a plantwide applicability limit for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.79.120 NMAC shall apply.

(3) For the purpose of applying the requirements of Subsection H of 20.2.79.109 NMAC to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to subpart 2, part D, title I of the federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

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

V. "Major stationary source" means the following.

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated new source review pollutant, except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the federal Clean Air Act, according to Subparagraphs (a) through (f) of Paragraph (1) of Subsection V of 20.2.79.7 NMAC.

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

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

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

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

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

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

(2) For the purposes of applying the requirements of Subsection H of 20.2.79.109 NMAC to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in Subparagraphs (a) through (f) of Paragraph (1) of Subsection V of 20.2.79.7 NMAC shall apply in areas subject to subpart 2 of part D, title I of the federal Clean Air Act.

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

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

(c) 100 tons per year or more of nitrogen oxides in any area designated under section 107(D) if the federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

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

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

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

(3) Any physical change that would occur at a stationary source not qualifying under Paragraph (1) or (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

(4) A major stationary source that is major for volatile organic compounds or

oxides of nitrogen shall be considered major for ozone.

(5) A stationary source shall not be a major stationary source due to fugitive emissions, to the extent they are quantifiable, unless the source belongs to:

(a) any category in Subsection B of 20.2.79.119 NMAC; or

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

(6) A stationary source shall not be a major stationary source due to secondary emissions.

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

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

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

Z. "Net emissions increase".

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

(a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection E of 20.2.79.109 NMAC; and

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection E of this section, except that Subparagraphs (c) and (d) of Paragraph (2) of Subsection E 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) either the department or the administrator 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 in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

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

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

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

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

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

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

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

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

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

AC. "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.

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

AE. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable.

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

AG. "Prevention of significant deterioration (PSD) permit" means any permit that is issued under 20.2.74 NMAC.

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

AI. "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 of that regulated new source review pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. 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 E 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 under Subsection AE of this section.

AJ. "Regulated new source review pollutant", for purposes of this section, means the following:

(1) nitrogen oxides or any volatile organic compounds;

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

(3) any pollutant that is identified under this paragraph (Paragraph (3) of Subsection AJ of 20.2.79.7 NMAC) as a constituent or precursor of a general pollutant listed in Paragraphs (1) or (2) of this subsection, provided that [a] such constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant; precursors identified by the administrator for purposes of NSR are the following:

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

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

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

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

(4) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in nonattainment major NSR permits; compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

AK. "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.

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

AM. "Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates: carbon monoxide, 100 tons per year; nitrogen oxides, 40 tons per year; sulfur dioxide, 40 tons per year; PM_{10} emissions, 15 tons per year; ozone, 40 tons per year of volatile organic compounds or nitrogen oxides; lead, 0.6 tons per year; $PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a $PM_{2.5}$ precursor under Subsection AJ of 20.2.79.7 NMAC.

(2) Notwithstanding the significant emissions rate for ozone in Paragraph (1) of Subsection AM of 20.2.79.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

(3) For the purposes of applying the requirements of Subsection H of 20.2.79.109 NMAC to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in Paragraphs (1), (2), and (5) of Subsection AM of 20.2.79.7 NMAC shall apply to nitrogen oxides emissions.

(4) Notwithstanding the significant emissions rate for carbon monoxide under Paragraph (1) of Subsection AM of 20.2.79.7 NMAC significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the U.S. environmental protection agency administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(5) Notwithstanding the significant emissions rates for ozone under Paragraphs (1) and (2) of Subsection AM of 20.2.79.7 NMAC, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act shall be considered a significant net emissions increase.

AN. "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions

that is significant (as defined in Subsection AM of this section) for that pollutant.

AO. "Stationary source" means any building, structure, facility, or installation which emits or may emit any regulated new source review pollutant.

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

AQ. "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

[11/30/95; 20.2.79.7 NMAC - Rn, 20 NMAC 2.79.107, 10/31/02; A, 1/22/06; A, 08/31/09; A, 6/3/11]

20.2.79.109 APPLICABILITY.

A. Any person constructing any new major stationary source or major modification shall obtain a permit from the department in accordance with the requirements of this part prior to the start of construction or modification if either of the following conditions apply:

(1) the major stationary source or major modification will be located within a nonattainment area so designated pursuant to Section 107 of the federal Clean Air Act and will emit a regulated pollutant for which it is major and which the area is designated nonattainment for; or

(2) the major stationary source or major modification will be located within an area designated attainment or unclassifiable pursuant to Section 107 of the federal Clean Air Act and will emit a regulated pollutant for which it is major and the ambient impact of such pollutant would exceed any of the significance levels in Subsection A of 20.2.79.119 NMAC at any location that does not meet any national ambient air quality standard for the same pollutant. (See Subsection D of 20.2.79.109 NMAC.)

B. The requirements of this part apply to each regulated pollutant meeting the criteria of either Paragraph (1) or Paragraph (2) of Subsection A of 20.2.79.109 NMAC.

C. For an area which is nonattainment for ozone, volatile organic compounds and oxides of nitrogen are the regulated pollutants which may make this part applicable under the provisions of Paragraph (1) of Subsection A of 20.2.79.109 NMAC.

D. Other requirements.

(1) A new major stationary source or major modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC shall demonstrate that the source or modification will not cause or contribute to a violation of any national ambient air quality standard by meeting the following requirements and no others of this part:

(a) Paragraph (2) of Subsection C of 20.2.79.112 NMAC regarding emission offsets;

(b) Subsection D of 20.2.79.112 NMAC regarding a net air quality benefit;

(c) 20.2.79.114 NMAC - Emission Offset Baseline;

(d) 20.2.79.115 NMAC - Emission Offset; and

(e) 20.2.79.117 NMAC - Air Quality Benefit.

(2) In addition , a new source or modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC and is also a major stationary source or major modification as defined in 20.2.74 NMAC (prevention of significant deterioration (PSD)), shall obtain a PSD permit under the provisions of 20.2.74 NMAC.

E. Applicability procedures.

(1) Except as otherwise provided in Paragraphs (3) and (4) of this subsection, and consistent with the definition of major modification, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in Subsection AM of 20.2.79.7 NMAC), and a significant net emissions increase (as defined in Subsections Z and AM of 20.2.79.7 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) and (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 of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions (as defined in Paragraphs (1) and (2) of Subsection E of 20.2.79.7 NMAC, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 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 from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Paragraph (3) of Subsection E of 20.2.79.7 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 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.

(6) For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.2.79.120 NMAC.

F. Except as otherwise provided in Paragraph (6) under this subsection (Subsection F of 20.2.79.109 NMAC), the following specific provisions apply [~~to~~] with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Paragraph (6) under this subsection (Subsection F of 20.2.79.109 NMAC), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection AI of 20.2.79.7 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 AI of 20.2.79.7 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 units 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 Paragraph (3) of this subsection setting out the unit's annual emissions during the year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of 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 Subsection AM of 20.2.79.7 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).

(6) A "reasonable possibility" under this subsection (Subsection F of 20.2.79.109 NMAC) occurs when the owner or operator calculates the project to result in either:

(a) a projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection AN of 20.2.79.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) a projected actual emissions increase that, added to the amount of emissions excluded under Subparagraph (3) of Subsection AI of 20.2.79.7 NMAC, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection AN of 20.2.79.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; for a project for which a reasonable possibility occurs only within the meaning of Subparagraph (b) of Paragraph (6) of Subsection F of 20.2.79.109 NMAC, and not also within the meaning of Subparagraph (a) of Paragraph (6) of Subsection F of 20.2.79.109 NMAC, then provisions Paragraphs (2) through (5) under this subsection (Subsection F of 20.2.79.109 NMAC) do not apply to the project.

G. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection F of this section (20.2.79.109 NMAC) available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

H. The requirements of this section (20.2.79.109 NMAC) applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the U.S. environmental protection agency administrator has granted a NO_X waiver applying the standards set forth under section 182(f) of the federal Clean Air Act and the waiver continues to apply.

I. In meeting the emissions offset requirements of 20.2.79.115 NMAC, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in Subsections J through N of 20.2.79.109 NMAC.

[~~I.~~] **J.** In meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas that are subject to subpart 2, part D, title I of the Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

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

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

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

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

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

[~~J.~~] K. Notwithstanding the requirements of Paragraph (1) of Subsection [~~I~~] J of 20.2.79.109 NMAC for meeting the requirements of 20.2.79.115 NMAC, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to subpart 2, part D title I of the federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title I of the federal Clean Air Act.

[~~K.~~] L. Meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas that are subject to subpart 1, part D, title I of the clean air act, including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b), the ratio of total actual emissions increase of VOC shall be at least 1:1.

[~~L.~~] **M.** The requirements of 20.2.79.109 NMAC applicable to major stationary sources and major modifications of PM10 shall also apply to major stationary sources and major modifications of PM10 precursors except where the US. environmental protection agency administrator determines that such sources do not contribute significantly to PM10 levels that exceed the PM_{10} ambient standards in the area.

N. In meeting the emissions

offset requirements of 20.2.79.115 NMAC, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph. The department may allow the offset requirements in 20.2.79.115 NMAC for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ to be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor identified under Subsection AJ of 20.2.79.7 NMAC if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

[11/30/95; 20.2.79.109 NMAC - Rn, 20 NMAC 2.79.109, 10/31/02; A, 1/22/06; A, 08/31/09; A, 6/3/11]

20.2.79.119 TABLES:

A. Significant ambient concentrations:

Pollutant	[Concentration in micrograms per cubic meter ($\mu g/m^3$) or milligrams per cubic meter (mg/m^3)] Averaging Time				
	Annual	24-hr	8-hr	3-hr	1-hr
Sulfur dioxide	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	25 $\mu g/m^3$	--
PM_{10}	1.0 $\mu g/m^3$	5 $\mu g/m^3$	--	--	--
$PM_{2.5}$	0.3 $\mu g/m^3$	1.2 $\mu g/m^3$			
Nitrogen dioxide	1.0 $\mu g/m^3$	--	--	--	--
Carbon monoxide	--	--	0.5 mg/m^3	--	2 mg/m^3

B. Fugitive emissions source categories:

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

[11/30/95; 20.2.79.119 NMAC - Rn, 20 NMAC 2.79.119, 10/31/02; A, 6/3/11]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

Explanatory paragraph: This is an amendment to 20.3.3 NMAC, Sections 302, 306, 317 and 331, effective June 30, 2011. The amendment to Subparagraph (a) of Paragraph (4) of Subsection C of 20.3.3.302 NMAC is the addition of "or non-agreement state" for the issuance of a specific license. There are no other changes to Section 302.

20.3.3.302 EXEMPTIONS - RADIOACTIVE MATERIAL OTHER THAN SOURCE MATERIAL:

C. Exempt items.

(4) Gas and aerosol detectors containing radioactive material.

(a) Except for persons who manufacture, process, produce or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from the licensing requirements in this part to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material, in gas and aerosol detectors designed to protect life or property from fires and airborne hazards, and manufactured, processed, produced or initially transferred in accordance with a specific license issued by the NRC, pursuant to 10 CFR 32.26, which license authorizes the initial transfer of the product for use under this paragraph. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007 in accordance with a specific license issued by the department, [~~or~~] agreement state or non-agreement state under comparable provisions to 10 CFR 32.26 authorizing distribution to persons exempt from regulatory requirements.

(b) Any person who desires to manufacture, process or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use pursuant to Subparagraph (a) of this paragraph, shall apply for a license to the NRC pursuant to 10 CFR 32.26, which license states that the product may be initially transferred by the licensee to persons exempt from the regulations pursuant to Subparagraph (a) of this paragraph or equivalent regulations of the NRC or an agreement state.

[20.3.3.302 NMAC - Rp, 20.3.3.302 NMAC, 04/30/2009; A, 06/30/2011]

20.3.3.306 TRANSPORTATION OF RADIOACTIVE MATERIAL:

A. Except as specified in Subsection D of this section, the regulations of the United States NRC set forth in 10 CFR 71 are hereby incorporated by reference.

B. Shipment and transport of radioactive material shall be in accordance with the provisions of Subsection A of this section.

C. The following modifications are made to the incorporated federal regulations in this section:

[~~(a)~~] **(1) "commission"** means the department or NRC;

[~~(b)~~] **(2) "act"** means the Radiation Protection Act, Sections 74-3-1 through 74-3-16 NMSA 1978; and

[~~(c)~~] **(3) "byproduct material"** means radioactive material as defined in 20.3.1.7 NMAC.

D. The following provisions contained in 10 CFR 71 are not incorporated in this section: 71.14(b), 71.19, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, 71.71, 71.73, 71.74, 71.75, 71.77, 71.101(c)(2), (d), and (e), 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, and 71.125.

[20.3.3.306 NMAC - Rp, 20.3.3.306 NMAC & 20.3.3.325 NMAC, 04/30/2009; A, 06/30/2011]

20.3.3.317 TERMS AND CONDITIONS OF LICENSES:

A. Each license issued pursuant to the requirements in this part shall be subject to all the provisions of the act, now or hereafter in effect, and to all rules, regulations and orders of the board or department.

B. No license issued or granted under this part [~~and no~~] nor any right under a license issued pursuant to this part shall be transferred, assigned, or in any manner disposed of, either voluntarily, or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the department shall, after securing full information, find that the transfer is in accordance with the provisions of the act, and shall give its consent in writing.

C. Each person licensed by the department pursuant to this part shall confine their use and possession of material licensed to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the rules in this part shall carry with it the right to receive, acquire, own and possess radioactive material. Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of 20.3.3.306 NMAC, incorporating 10 CFR 71.

D. Each license issued pursuant to the regulations in this part shall be deemed to contain the applicable provisions set forth in the act and 20.3 NMAC, whether or not these provisions are expressly set forth in the license.

E. Filing for bankruptcy.

(1) Each general licensee that is required to register by Paragraph (m) of Subsection B of 20.3.3.305 NMAC and each specific licensee shall notify the department in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11 (bankruptcy) of the United States Code by or against:

(a) the licensee;

(b) an entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

(2) The notification must indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

F. The general licenses provided in this part are subject to the provisions in 20.3.1 NMAC, Paragraph (4) of Subsection A of 20.3.3.302 NMAC, Subsection A of 20.3.3.317 NMAC, 20.3.3.322 NMAC, 20.3.3.323 NMAC, 20.3.3.326 NMAC, 20.3.4 NMAC and 20.3.10 NMAC unless indicated otherwise by a particular provision of the general license.

G. Licensees required submitting emergency plans by 20.3.3.309 NMAC shall follow the emergency plan approved by the department. The licensee may change the approved plan without department approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the department and to affected offsite response organizations prior to the effective date of the change. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the department.

H. Security requirements for portable gauges. Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

I. Generators. Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with 20.3.7.706 NMAC of this chapter. The licensee shall record the results of each test and retain each record for 3 years after the

record is made.

J. PET drugs for non-commercial distribution.

(1) Authorization under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, or other federal and state requirements governing radioactive drugs.

(2) Each licensee authorized under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium shall:

(a) satisfy the labeling requirements in Subparagraph (d) of Paragraph (1) of Subsection J of 20.3.3.315 NMAC for each PET radioactive drug transport radiation shield and each syringe, vial or other container used to hold a PET radioactive drug intended for non-commercial distribution to members of its consortium; and

(b) possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for non-commercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check and instrument adjustment requirements in Paragraph (3) of Subsection J of 20.3.3.315 NMAC.

(3) A licensee that is a pharmacy authorized under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radioactive drugs shall be:

(a) an authorized nuclear pharmacist that meets the requirements in Subparagraph (b) of Paragraph (2) of Subsection J of 20.3.3.315 NMAC; or

(b) an individual under the supervision of an authorized nuclear pharmacist as specified in Subsection F of 20.3.7.702 NMAC.

(4) A pharmacy, authorized under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of Subparagraph (e) of Paragraph (2) of Subsection J of 20.3.3.315 NMAC.

[20.3.3.317 NMAC - Rp, 20.3.3.317 NMAC, 04/30/2009; A, 06/30/2011]

20.3.3.331 [~~SCHEDULE C - GROUPS OF DIAGNOSTIC USES OF RADIOPHARMACEUTICALS IN HUMANS:~~

~~A. Group I. Uptake, Dilution and Excretion Studies.~~ ~~Possession and use of unsealed radioactive material for uptake, dilution and excretion studies for which a written directive is not required shall be authorized pursuant to 20.3.7.704 NMAC.~~

~~B. Group II. Imaging and Tumor Localization Studies.~~ ~~Possession and use of unsealed radioactive material for imaging and localization studies for which a written directive is not required shall be authorized pursuant to 20.3.7.705 NMAC.~~] [**RESERVED**]

[20.3.3.331 NMAC - Rp, 20.3.3.331 NMAC, 04/30/2009; Repealed, 06/30/2011]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

Explanatory paragraph: This is an amendment to 20.3.4 NMAC, Sections 7, 405, 409, 440 and 457, effective June 30, 2011. The amendment to Subsection CK of 20.3.4.7 NMAC amends the definition of TEDE (total effective dose equivalent). There are no other changes to Section 7.

20.3.4.7 DEFINITIONS:

CK. "TEDE" (total effective dose equivalent) means the sum of the [~~deep~~] effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

[20.3.4.7 NMAC - Rp, 20.3.4.7 NMAC, 04/30/2009; A, 06/30/2011]

20.3.4.405 OCCUPATIONAL DOSE LIMITS FOR ADULTS:

A. Annual limits. The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to 20.3.4.410 NMAC, to the following dose limits:

(1) an annual limit, which is the more limiting of:

(a) the total effective dose equivalent being equal to 5 rems (0.05 sievert); or

(b) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 50 rems (0.5 sievert); and

(2) the annual limits to the lens of the eye, to the skin of the whole body, and to the skin of extremities which are:

(a) a lens dose equivalent of 15 rems (0.15 sievert); and

(b) a shallow dose equivalent of 50 rems (0.5 sievert) to the skin of the whole body or to the skin of any extremity.

B. Doses received in excess of the annual limits, including doses received during accidents, emergencies and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime (see Subsection E of 20.3.4.410 NMAC).

C. Determining, assessing and assigning dose equivalent.

(1) [~~The assigned deep dose equivalent shall be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure.~~] When the external exposure is determined by measurement with an external personal monitoring device, the deep dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the department. The assigned shallow-dose equivalent must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The deep-dose equivalent, lens dose equivalent and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(2) Working with fluoroscopic equipment. When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Paragraph (5) of Subsection A of 20.3.4.417 NMAC, the effective dose equivalent for external radiation shall be determined as follows:

(a) when only one individual monitoring device is used and it is located at the neck outside the protective apron, the reported deep dose equivalent shall be the effective dose equivalent for external radiation; or

(b) when only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in Subsection A of this section, the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(c) when individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

D. DAC and ALI. Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in table I of 20.3.4.461 NMAC, and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

E. Uranium limits. Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity (see table note 3 of 20.3.4.461 NMAC.)

F. Prior dose. The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person during the current year (see 20.3.4.409 NMAC).

[20.3.4.405 NMAC - Rp, 20.3.4.405 NMAC, 04/30/2009; A, 06/30/2011]

20.3.4.409 DETERMINATION OF PRIOR OCCUPATIONAL DOSE:

A. For each individual who may enter the licensee's or registrant's restricted area and is likely to receive, in a year, an occupational dose requiring monitoring pursuant to 20.3.4.417 NMAC, the licensee or registrant shall determine the occupational radiation dose received during the current year[~~:~~

~~**(1)** determine the occupational radiation dose received during the current year; and~~

~~**(2)** attempt to obtain the records of lifetime cumulative occupational radiation dose~~].

B. Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

(1) the internal and external doses from all previous planned special exposures; and

(2) all doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

C. In complying with the requirements of [~~Subsection A~~] Subsections A or B of this section, a licensee or registrant may:

(1) accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and

(2) accept, as the record of lifetime cumulative radiation dose, a form *cumulative occupational dose history* or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant; and

(3) obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile or letter; the licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

D. Recording exposure history.

(1) The licensee or registrant shall record the exposure history of each individual, as required by [~~Subsection A~~] Subsections A or B of this section, on department form *cumulative occupational dose history*, or other clear and legible record, [~~and~~] including all the information required [~~on~~] by that form. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing department form *cumulative occupational dose history* or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on department form *cumulative occupational dose history* or equivalent indicating the periods of time for which data are not available.

(2) Licensees or registrants are not required to partition historical dose between external dose equivalent(s) and internal committed dose equivalent(s). Further, occupational exposure histories obtained and recorded on department form *cumulative occupational dose history* or equivalent before the effective date of these regulations, might not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

E. If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(1) in establishing administrative controls pursuant to Subsection F of 20.3.4.405 NMAC for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 millisieverts) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(2) that the individual is not available for planned special exposures.

F. The licensee or registrant shall retain the records on department form *cumulative occupational dose history* or equivalent until the department terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing department form *cumulative occupational dose history* or equivalent for 3 years after the record is made.

[20.3.4.409 NMAC - Rp, 20.3.4.409 NMAC, 04/30/2009; A, 06/30/2011]

20.3.4.440 RECORDS - GENERAL PROVISIONS:

A. Each licensee or registrant shall use the units: curie, rad, rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this part.

B. In the records required by this part, the licensee or registrant may record quantities in SI units in parentheses following each of the units specified in Subsection A of this section. However, all quantities must be recorded as stated in Subsection A of this section.

C. Notwithstanding the requirements of Subsection A of this section, when recording information on shipment manifests, as required in Subsection B of 20.3.4.438 NMAC, information must be recorded in [~~SI~~] the international system of units (SI), or in SI and the units as specified in Subsection A of this section.

D. The licensee or registrant shall make a clear distinction among the quantities entered on the records required by this part (e.g., total effective dose equivalent, shallow-dose equivalent, lens dose equivalent, deep-dose equivalent, committed effective dose equivalent).

[20.3.4.440 NMAC - Rp, 20.3.4.440 NMAC, 04/30/2009; A, 06/30/2011]

20.3.4.457 NOTIFICATIONS AND REPORTS TO INDIVIDUALS OF EXCEEDING DOSE LIMITS:

A. Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in 20.3.10.1003 NMAC.

B. When a licensee or registrant is required pursuant to the provisions of 20.3.4.453 NMAC[~~,~~] or 20.3.4.454 NMAC [~~or 20.3.4.456 NMAC~~] to report to the department any exposure of an identified occupationally exposed individual, or an identified member of the public, to radiation or radioactive material, the licensee or registrant shall also provide a copy of the report submitted to the department to the individual. This report must be transmitted at a time not later than the transmittal to the department, and shall

comply with the provisions of 20.3.10.1003 NMAC.

[20.3.4.457 NMAC - Rp, 20.3.4.457 NMAC, 04/30/2009; A, 06/30/2011]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to Section 10 of 8.102.410 NMAC, effective June 1, 2011.

8.102.410.10 CITIZENSHIP AND ALIEN STATUS:

A. Eligibility for TANF funded cash assistance:

(1) Participation in the NMW cash assistance program is limited to a U.S. citizen, a naturalized citizen or a non-citizen U.S. national.

(2) A non-citizen, other than a non-citizen U.S. national, must be both a qualified and eligible alien in order to participate in the NMW cash assistance program.

B. Definitions:

(1) Continuously lived in the U.S.: means that a non-citizen has lived in the U.S. without a single absence of more than 30 days or has lived in the U.S. without a total of aggregated absences of more than 90 days.

(2) Federal means-tested public benefit: means benefits from the food stamp program; the food assistance block grant programs in Puerto Rico, American Samoa, and the commonwealth of the Northern Mariana Islands; supplemental security income (SSI); and the TANF block grant program under title IV of the Social Security Act; medicaid, and SCHIP.

(3) Five-year bar: means the federally imposed prohibition on receiving federal means-tested public benefits for certain qualified aliens who entered the United States on or after August 22, 1996, until they have continuously lived in the U.S for five years. If an alien enters the U.S. on or after August 22, 1996, but does not meet the definition of a qualified alien, the five-year bar begins on the date the non-citizen attains qualified alien status.

(4) Immigrant: means a non-citizen or an alien within the meaning found in title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(5) Non-citizen U.S. national: means a person who is not a U.S. citizen but was born in an outlying possession of the United States on or after the date the U.S. acquired the possession, or a person whose parents are non-citizen U.S. nationals. A person who resides on one of the following U.S. island territories is a non-citizen U.S. national: American Samoa, Swains Island or the Northern Mariana Islands.

(6) Permanently residing under color of law (PRUCOL): means a person whose presence in the US is known by the department of homeland security (DHS) and the DHS does not intend to deport the person. Persons classified as PRUCOL may or may not also be qualified aliens.

C. Qualified alien: A qualified alien is any of the following types of non-citizens:

(1) who is lawfully admitted for permanent residence under the Immigration and Nationality Act (an LPR);

(2) who is granted asylum under Section 208 of the INA (an asylee);

(3) who is a refugee admitted to the U.S. under Section 207 of the INA (a refugee);

(4) who is paroled into the U.S. under Section 212(d)(5) of the INA for at least one year (a parolee);

(5) whose deportation is being withheld under Section 241(b)(3) or 243(h) of the INA;

(6) who is granted conditional entry pursuant to Section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(7) who is a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980;

(8) who is a victim of a severe form of trafficking, regardless of immigration status, under the Trafficking Victims Protection Act of 2000.

D. Qualified alien due to battery or extreme cruelty: means a non-citizen, regardless of alien status, who has been battered or subjected to extreme cruelty, as long as the following elements are met:

(1) there is a substantial connection between such battery or cruelty and the need for the cash benefits; and

(2) the abused non-citizen is not currently living with the abuser; and

(3) the INS or executive office of immigration review (EOIR) has:

(a) approved a self-petition seeking permanent residency, or

(b) approved a petition for a family based immigrant visa; or

(c) approved an application for cancellation of removal or suspension of deportation; or

(d) found that a pending petition or application establishes "prima facie" (true and valid) case for approval; and

(4) the non-citizen has been battered or subjected to extreme cruelty in the US by a spouse or parent, or by a member of the spouse or parent's family residing in the same household as the abused non-citizen and the spouse or parent of the abused non-citizen consented to, or acquiesced in such battery or cruelty; or

(5) the non-citizen has a child who has been battered or subjected to extreme cruelty in the US by the non-citizen's spouse or parent, as long as the non-citizen does not actively participate in the battery or cruelty; or a non-citizen whose child is battered or subjected to extreme cruelty by a member of the non-citizen's spouse or parent's family residing in the same household and the non-citizen's spouse or parent consented or acquiesced to such battery or cruelty; or

(6) the non-citizen is a child who resides in the same household as a parent who has been battered or subjected to extreme cruelty in the US by the parent's spouse or by a member of the spouse's family residing the same household and the non-citizen's spouse consented or acquiesced to such battery or cruelty.

(7) U.S. citizen: means, but may not be limited to:

(a) a person born in the United States;

(b) a person born in Puerto Rico, Guam, U.S. Virgin Islands or Northern Mariana Islands who has not renounced or otherwise lost his or her citizenship;

(c) a person born outside the U.S. to at least one U.S. citizen parent; or

(d) a person who is a naturalized citizen.

E. Aliens who are eligible to participate: An alien who meets the definition of a qualified alien shall be eligible to participate in the NMW cash assistance program if the alien:

(1) physically entered the U.S. prior to August 22, 1996 and obtained qualified alien status before August 22, 1996;

(2) physically entered the U.S. prior to August 22, 1996, obtained qualified alien status on or after August 22, 1996 and has continuously lived in the U.S. from the latest date of entry prior to August 22, 1996 until the date the participant or applicant obtained qualified alien status;

(3) physically entered the U.S. on or after August 22, 1996, meets the definition of a qualified alien and has been in qualified alien status for at least five years (five year bar);

(4) physically entered the U.S. before August 22, 1996 and did not continuously live in the U.S. from the latest date of entry prior to August 22, 1996 until obtaining qualified alien status, but has been in qualified alien status for at least five years;

(5) is a lawfully admitted permanent resident alien under the INA, who has worked or can be credited with 40 qualifying quarters; or

(6) is a veteran of the military with an honorable discharge that is not based on alien status who has fulfilled the minimum active duty requirements; or the non-citizen who is on active duty military service; or the person is the spouse, surviving spouse

who has not remarried, or an unmarried dependent child of a veteran or active duty service member;

(7) an alien is eligible for a period of five years from the date an alien:

(a) is granted status as an asylee under Section 208 of the INA;

(b) is admitted as a refugee to the U.S. under Section 207 of the INA;

(c) has had his or her deportation withheld under Section 241(b)(3) or 243(h) of the INA;

(d) is admitted as an Amerasian immigrant under Section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988; or

(e) is admitted as a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980; and

(8) a qualified alien who entered the United States on or after August 22, 1996, to whom the five-year bar applies, may participate in the state-funded TANF program without regard to how long the alien has been residing in the United States.

F. Victim of severe form of trafficking: A victim of a severe form of trafficking, regardless of immigration status, who has been certified by the U.S. department of health and human services (DHHS), office of refugee resettlement (ORR), is eligible to the same extent as a refugee.

(1) The date of entry for a victim of trafficking is the date of certification by ORR (which appears in the body of the eligibility letter from the ORR).

(2) A victim of a severe form of trafficking:

(a) must have and present a certification of eligibility letter from ORR for adults or letter for children (similar to but not necessarily a certification letter) as proof of status; and

(b) is not required to provide any immigration documents, but may have such documents and may present such documents.

(3) Determining eligibility for a victim of trafficking must include a call to the trafficking verification line at 1-866-401-5510.

(4) The caseworker must inform ORR of the benefits for which the victim of trafficking has applied.

G. Quarters of coverage:

(1) SSA reports quarters of coverage through the quarters of coverage history system (QCHS).

(2) The number of qualifying quarters is determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, and is based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(a) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of eligibility.

(b) If eligibility of an alien is based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the caseworker shall determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(3) Disputing quarters: If a participant or applicant disputes the SSA determination of quarters of coverage, the participant may not participate based on having 40 qualifying quarters until a determination is made that the participant or applicant can be credited with 40 qualifying quarters. The participant or applicant may participate as a state-funded benefit group member, if otherwise eligible.

(4) Federal means-tested benefit: After December 31, 1996, a quarter in which an alien received any federal means-tested public benefit, as defined by the agency providing the benefit shall not be credited toward the 40-quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received any federal means-tested public benefit. If the alien earns the 40th quarter of coverage prior to applying for a federal means- tested public benefit in that same quarter, the caseworker shall allow that quarter toward the 40 qualifying quarters total.

H. Verification of citizenship/eligible alien status: U.S. citizenship is verified only when client statement of citizenship is inconsistent with statements made by the applicant or with other information on the application, previous applications, or other documented information known to HSD.

(1) Questionable U.S. citizenship: Any mandatory benefit group member whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable shall have all of his resources and a pro rata share of income considered available to any remaining benefit group members.

(2) Eligible alien status: Verification of eligible alien status is mandatory at initial certification. Only those benefit group members identified as aliens with qualified and eligible alien status are eligible to participate in the NMW program.

(3) Ineligible or questionable alien status: Any household member identified as an ineligible alien, or whose alien status is questionable cannot participate in the NMW program.

I. Need for documentation:

(1) Benefit group members identified as aliens must present documentation, such as but not limited to, a letter, notice of eligibility, or identification card which clearly establishes that the alien has been granted legal status.

(2) A caseworker shall allow an alien a reasonable time to submit acceptable documentation of eligible alien status. A reasonable time shall be 10 days after the date the caseworker requests an acceptable document, or until the 30th day after application, whichever is longer.

(3) If verification of an participant 's eligible status is not provided by the deadline, the eligibility of the remaining benefit group members shall be determined. Verification of eligible alien status provided at a later date shall be treated as a reported change in benefit group membership.

(4) During the application process, if an individual has been determined to be a qualified alien and either the individual or HSD submits a request to a federal agency for documentation to verify eligible alien status, HSD must certify the individual in the TANF benefit group as a state-funded participant until a determination is made that the individual is eligible for TANF funded cash assistance.

(5) Inability to obtain INS documentation: If a benefit group indicates an inability to provide documentation of alien status for any mandatory member of the benefit group, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to contact INS when the alien does not provide any documentation from INS.

J. Failure to cooperate: If a benefit group or a benefit group member indicates an unwillingness to provide documentation of alien status for any member, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to get documentation.

K. Reporting undocumented (illegal) non-citizens:

(1) HSD shall inform the local [~~INS office immediately when a~~] DHS office only when an official determination is made that any mandatory member of a benefit group who is applying for and receiving benefits is present in the U.S. in violation of the INA. A determination that a non-citizen is in the US in violation of the INA is made when:

[~~**(a)** there has been a finding or conclusion of law through a formal determination process by the INS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the US; or~~

~~**(b)** the immigrant states to the~~

~~department that he or she is in the US in violation of the INA, and the statement is supported by an INS or EOIR finding.~~]

(a) the non-citizens unlawful presence is a finding of fact or conclusion of law that is made by HSD as part of a formal determination about the individuals eligibility; and

(b) HSD's finding is supported by a determination by DHS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the U.S. such as a final order of deportation.

(2) An non-citizen who resides in the US in violation of the INA shall be considered an ineligible benefit group member until there is a finding or conclusion of law through a formal determination process by the INS or EOIR.

(3) Illegal non-citizen status is considered reported when the caseworker enters relevant information about the non-citizen on the benefit group's computer file.

(4) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

L. Income and resources of ineligible aliens: All the resources and a prorated share of income of an ineligible alien, or of an alien whose alien status is unverified, shall be considered in determining eligibility and the cash assistance benefit amount for the remaining eligible benefit group members.

[8.102.410.10 NMAC - Rp 8.102.410.10 NMAC, 07/01/2001; A, 07/01/2004; A, 11/15/2007; A, 12/01/2009; A, 06/01/2011]

NEW MEXICO HUMAN SERVICES DEPARTMENT

INCOME SUPPORT DIVISION

This is an amendment to Section 9 of 8.139.410 NMAC, effective June 1, 2011.

8.139.410.9 CITIZENSHIP AND ALIEN STATUS: Participation in the food stamp program is limited to individuals who live in the United States, and who are U.S. citizens or aliens with eligible alien status. Among those ineligible for participation are alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in another country.

A. Eligibility: No individual is eligible to participate in the food stamp program unless that individual is otherwise eligible and is:

(1) a U.S. citizen:

(2) a U.S. non-citizen national

(3) an American Indian who is:

(a) an American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply; or

(b) a member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)) which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians;

(4) Hmong or Highland Laotian who is:

(a) a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975 who is lawfully residing in the U.S.;

(b) the spouse, or surviving spouse of such Hmong or Highland Laotian, or

(c) an unmarried or surviving dependent child who is under the age of 18 or if a full-time student under the age of 22; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday of such Hmong or Highland Laotian.

(5) Human trafficking victim who is:

(a) certified by the DHS, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(b) under the age of 18, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(c) the spouse, child, parent or unmarried minor sibling of a victim of a severe form of trafficking in persons under 21 years of age, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(d) the spouse or child of a victim of a severe form of trafficking in persons 21 years of age or older, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA.

[~~(5)~~] (6) Qualified and eligible alien: An individual who is both a "qualified alien" and an "eligible alien" as defined in Subsection B of 8.139.410.9 NMAC.

B. Qualified and eligible aliens: An alien may qualify for participation in the food stamp program if the alien meets at least one definition of "qualified alien" from Paragraph (1) below and one definition of "eligible alien" as defined in Paragraph (2) below.

(1) Qualified alien: A "qualified alien" means:

(a) an alien who is lawfully admitted for permanent residence under the INA;

(b) an alien who is granted asylum under section 208 of the INA;

(c) a refugee who is admitted to the United States under section 207 of the INA;

(d) an alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(e) an alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;

(f) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(g) an alien, an alien child's parents or an alien child who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse;

(h) an alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(2) Eligible aliens not subject to the five year bar: A qualified alien, as defined in Paragraph (1) of this subsection, [~~must have a status of at least one of the following to be eligible to receive food stamps~~] is eligible to receive food stamps and is not subject to the requirement to be in a qualified status for five years as set forth in Subparagraph (b) of Paragraph (2) of this section, if the individual meets at least one of the criteria of Paragraph (2):

[~~(a)~~ ~~an alien who is lawfully admitted to the United States, either as a lawful permanent resident (LPR) or in any other qualified alien status, and who has been living in the United States for at least five years from the date of the alien's entry into the United States;~~

~~(b)~~ ~~an alien who is lawfully admitted to the United States for permanent residence (LPR) under the Immigration and Nationality Act, and has worked for 40 qualifying quarters of coverage as defined under Title II of the Social Security Act, or can be credited with such qualifying quarters; the definition of lawfully admitted for permanent residence under the Immigration and Nationality Act shall be based on standards issued by the U.S. immigration and naturalization service.~~]

(a) an alien age 18 or older lawfully admitted for permanent residence under INA who has 40 qualifying quarters as determined under Title II of the SSA, including qualifying quarters of work not

covered by Title II of the SSA, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

[~~(c)~~] (b) an alien admitted as a refugee under section 207 of the INA; [~~eligibility is limited to 7 years from the date of the alien's entry into the U.S.;~~]

[~~(d)~~] (c) an alien granted asylum under section 208 of the INA; [~~eligibility is limited to 7 years from the date asylum was granted;~~]

[~~(e)~~] (d) an alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA; [~~eligibility is limited to 7 years from the date deportation or removal was withheld;~~]

[~~(f)~~] (e) an alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980); [~~eligibility is limited to 7 years from the date the status as a Cuban or Haitian entrant was granted;~~]

[~~(g)~~] (f) an Amerasian admitted pursuant to section 584 of Public Law 100-202, as amended by Public Law 100-461; [~~eligibility is limited to 7 years from the date admitted as an Amerasian;~~]

[~~(h)~~] (g) an alien with one of the following military connections:

(i) a veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C 5303A(d), including an individual who died in active military, naval or air service;

(ii) an individual on active duty in the armed forces of the U.S. (other than for training);

(iii) the spouse or surviving spouse of a veteran or active duty military alien described above provided the spouse has not remarried;

(iv) a child or surviving child of a deceased veteran (provided such child was dependent upon the veteran at the time of the veteran's death) who is under the age of 18 (if a full- time student, under the age of 22); or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday;

[~~(i)~~](h) a qualified alien who is lawfully residing in the U.S. and is receiving benefits or assistance for blindness or disability as defined in Paragraph (23) of Subsection A of 8.139.100.7 NMAC.

[~~(j)~~](i) an individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

[~~(k)~~](j) an individual who is lawfully residing in the U.S. and is under 18 years of age.

(3) Eligible aliens subject to the five year bar: The following qualified aliens, as defined in Paragraph (1), must be in a qualified status for five years before being eligible to receive food stamps. The five years in qualified status may be either consecutive or non-consecutive. Temporary absences of less than six months from the United States with no intention of abandoning U.S. residency do not terminate or interrupt the individual's period of U.S. residency. If the resident is absent for more than six months, the department shall presume that U.S. residency was interrupted unless the alien presents evidence of their intent to resume U.S. residency. In determining whether an alien with an interrupted period of U.S. residency has resided in the U.S. for five years, the agency shall consider all months of residency in the U.S., including any months of residency before interruption:

(a) an alien 18 or older lawfully admitted for permanent residence under the INA;

(b) an alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least one year;

(c) an alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of abuse, an alien whose child has been battered or subjected to cruelty, or an alien child whose parent has been battered;

(d) an alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980.

[~~(3)~~] (4) Quarters of coverage:

(a) SSA reports quarters of coverage through the quarters of coverage history system (QCHS).

(b) An alien lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(i) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of food stamp eligibility.

(ii) If eligibility of an alien is based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the caseworker shall determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(c) Disputing quarters: If an applicant disputes the SSA determination of quarters of coverage reported by QCHS, the individual may participate for up to six (6) months pending the results of an SSA investigation. The individual or HSD must have requested an investigation from SSA in order to participate. The household is responsible for repayment of any food stamp benefits issued for such individual during the investigation if SSA determines that the individual cannot be credited with 40 quarters of coverage under Title II of the Social Security Act.

[~~(4)~~] (5) Federal means-tested benefit: After December 31, 1996, a quarter in which an alien received any federal means-tested public benefit, as defined by the agency providing the benefit, or actually received food stamps is not creditable toward the 40-quarter total. A parent's or spouse's quarter is not creditable if the parent or spouse actually received any federal means-tested public benefit or actually received food stamps in that quarter. If the alien earns the 40th quarter of coverage prior to applying for food stamps or any other federal means-tested public benefit in that same quarter, the caseworker shall allow that quarter toward the 40 qualifying quarters total.

(a) Federal means-tested benefits include, but may not be limited to, benefits from:

(i) the food stamp program;

(ii) the food assistance block grant programs in Puerto Rico, American Samoa, and the Commonwealth of the Northern Mariana Islands;

(iii) supplemental security income (SSI);

(iv) TANF block grant under Title IV of the Social Security Act.

(b) For purposes of determining whether an alien has or has not received a federal means-tested benefit during a quarter, the definition of federal means-tested benefit shall not include:

(i) medical assistance under Title XIX of the Social Security Act (medicaid) for emergency treatment of an alien, not related to an organ transplant procedure, if the alien otherwise meets eligibility for medical assistance under the state plan;

(ii) short-term, non-cash, in-kind emergency disaster relief;

(iii) assistance or benefits under the National School Lunch Act;

(iv) assistance or

benefits under the Child Nutrition Act of 1966;

(v) public health assistance (not including any assistance under Title XIX medicaid) for immunizations, and testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by communicable diseases;

(vi) payments for foster care and adoption assistance under Part B and E of Title IV of the Social Security Act for a parent or child who would, in the absence of the restriction of eligibility for aliens contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, be eligible for such payments made on the child's behalf, but only if the foster or adoptive parent (or parents) of such child is a qualified alien;

(vii) programs, services, or assistance, delivering in-kind services at the community level and necessary for the protection of life or safety, that do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided, on the individual recipient's income or resources;

(viii) programs of student assistance under titles IV, V, IX, and X of the Higher Education Act of 1965, and titles III, VII, and VIII of the Public Health Service Act;

(ix) means-tested programs under the Elementary and Secondary Education Act of 1965;

(x) benefits under the Head Start Act;

(xi) benefits under the Workforce Investment Act.

(6) Adjustments in status: Each category of eligible alien status stands alone for purposes of determining eligibility.

(a) When a qualified alien determined to be an eligible alien not required to meet the five year bar adjusts to an eligible alien status that must meet the five year bar they will not lose food stamp eligibility.

(b) Upon expiration of one eligibility status, the department must determine if eligibility exists under another status.

C. Verification of citizenship/eligible alien status: U.S. citizenship is verified only when client statement of citizenship is inconsistent with statements made by the applicant or with other information on the application, previous applications, or other documented information known to HSD.

(1) U.S. citizenship: Any member whose U.S. citizenship is questionable is ineligible to participate until proof of U.S. citizenship is obtained. The member whose citizenship is questionable shall have all of his resources and a pro rata share of income considered available to any remaining household members.

(2) Eligible alien status: Verification of eligible alien status is mandatory at initial certification. Only those household members identified as aliens with qualified and eligible alien status are eligible to participate in the FSP.

(3) Ineligible or questionable alien status: Any household member identified as an ineligible alien, or whose alien status is in question cannot participate in the FSP. The caseworker is responsible for offering to contact the immigration and naturalization service if the alien has a document that does not clearly indicate eligible or ineligible alien status.

D. Need for documentation:

(1) Household members identified as aliens must present documentation, such as but not limited to, a letter, notice of eligibility, or identification card which clearly establishes that the alien has been granted legal status.

(2) A caseworker shall allow aliens a reasonable time to submit acceptable documentation of eligible alien status. A reasonable time shall be 10 days after the date the caseworker requests an acceptable document, or until the 30th day after application, whichever is longer.

(3) If verification of an individual's eligible status is not provided by the deadline, the eligibility of the remaining household members shall be determined. Verification of eligible alien status provided at a later date shall be treated as a reported change in household membership.

(4) During the application process, if an individual has been determined to be a qualified alien and either the individual of HSD submits a request to a federal agency for documentation to verify eligible alien status, HSD must certify the individual for up to six months pending the results of the inquiry. The six-month time limit begins in the month the original request for verification is made.

(5) If a caseworker accepts a non-INS document and determines that it is reasonable evidence of eligible alien status, the document shall be copied and sent to INS for verification. The caseworker shall not delay, deny, reduce, or terminate the individual's participation pending verification from INS.

(6) Inability to obtain INS documentation: If a household indicates an inability to provide documentation of alien status for any member of the household, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to contact INS when the alien does not provide any documentation from INS.

E. Failure to cooperate: If a household, or a household member, indicates an unwillingness to provide documentation of alien status for any member, that member shall be considered an ineligible alien. The caseworker shall not continue efforts to get documentation.

F. Reporting illegal aliens:

(1) HSD shall inform the local [~~INS office immediately when a~~] DHS only when an official determination is made that any member of a household who is applying for or receives benefits is present in the US in violation of the INA. An official determination that an illegal alien is in the US in violation of the INA is only made when:

[~~**(2)** A determination that an alien is in the US in violation of the INA is made when:~~

~~**(a)** there has been a finding or conclusion of law through a formal determination process by the INS or the executive office of immigration review (EOIR) that the alien is unlawfully residing in the US; or~~

~~**(b)** the alien states to the department that he or she is in the US in violation of the INA, and the statement is supported by an INS or EOIR finding;~~

~~**(c)** an alien who resides in the US in violation of the INA shall be considered an ineligible alien until there is a finding or conclusion of law through a formal determination process by the INS or EOIR.~~]

(a) the illegal aliens unlawful presence is a finding of fact or conclusion of law that is made by HSD as part of a formal determination about the individuals eligibility; and

(b) HSD's finding is supported by a determination by DHS or the executive office of immigration review (EOIR) that the non-citizen is unlawfully residing in the US, such as a final order of deportation.

(2) A systematic alien verification for entitlements (SAVE) response showing no service record on an individual or an immigration status making the individual ineligible for a benefit is not a finding of fact or conclusion of law that the individual is not lawfully present.

(3) Illegal alien status is considered reported when the caseworker enters the information about the non-citizen on the household's computer file.

G. Income and resources of ineligible aliens: All the resources and a prorated share of income of an ineligible alien, or of an alien whose alien status is unverified, shall be considered in determining eligibility and food stamp benefit amount for the remaining eligible household members.

[02/01/95, 07/01/98, 02/01/99; 8.139.410.9 NMAC - Rn, 8 NMAC 3.FSP.412, 05/15/2001; A, 02/14/2002; A, 10/01/2002; A, 04/01/2003; A, 10/01/2003; A, 06/01/2011]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.29 NMAC, Sections 7, 8, 9, 10, 14, 15 and addition of new Section 12 and 13, effective 06-11-2011.

16.19.29.7 DEFINITIONS:

A. "Controlled substance" has the meaning given such term in 30-31-2 NMSA.

B. "Board of pharmacy" means the state agency responsible for the functions listed in 16.19.29.8 NMAC.

C. "Patient" means the person or animal who is the ultimate user of a drug for whom a prescription is issued and for whom a drug is dispensed.

D. "Dispenser" means the person who delivers a schedule II - V controlled substance as defined in Subsection E to the ultimate user, but does not include the following:

(1) a licensed hospital pharmacy that distributes such substances for the purpose of inpatient hospital care;

(2) a practitioner, or other authorized person who administers such a substance; or

(3) a wholesale distributor of a schedule II - V controlled substance;

(4) clinics, urgent care or emergency departments dispensing no more than 12 dosage units to an individual patient within a 72 hour period.

E. "Schedule II, III, IV and V controlled substance" means substances that are listed in schedules II, III, IV, and V of the schedules provided under 30-31-5 to 30-31-10 of NMSA or the federal controlled substances regulation (21 U.S.C. 812).

F. "Report" means a compilation of data concerning a patient, a dispenser, a practitioner, or a controlled substance.

[16.19.29.7 NMAC - N, 07-15-04; A, 06-11-11]

16.19.29.8 REQUIREMENTS FOR THE PRESCRIPTION MONITORING PROGRAM:

A. The board shall monitor the dispensing of all schedule II, III, [~~and~~] IV **and V** controlled substances by all pharmacies licensed to dispense such substances to patients in this state.

B. Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a drug included under Subsection A of this section. Information to be reported shall conform to the standards developed by the American society for automation in pharmacy (ASAP) and published in the "ASAP telecommunications format for controlled substances", [~~1995~~] **2009 4.1** edition. Information submitted for each prescription shall include:

(1) dispenser DEA number;

(2) date prescription filled;

(3) prescription number;

(4) whether the prescription is new or a refill;

(5) NDC code for drug dispensed;

(6) quantity dispensed;

(7) patient name;

(8) patient address;

(9) patient date of birth;

(10) prescriber DEA number;

(11) date prescription issued by prescriber;

(12) and [~~if available, the diagnosis code using the current version of the international classification of diseases~~] **payment classification**.

C. Each dispenser shall submit the information in accordance with transmission methods and frequency established by the board; but shall report at least every [~~thirty~~] **seven** days[~~, between the 1st and 15th of the month following the month the prescription was dispensed~~]. A record of each controlled substance prescription dispensed must be transmitted to the boards' agent by computer modem[~~, computer disk, cassette tape or other acceptable electronic format monthly~~].

[~~D. The board may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. Such waiver may permit the dispenser to submit prescription information by paper form or other means, provided that all information required in subsection B of this section is submitted in this alternative format.~~]

[16.19.29.8 NMAC - N, 07-15-04; A, 06-11-11]

16.19.29.9 ACCESS TO PRESCRIPTION INFORMATION:

A. Prescription information submitted to the board shall be confidential and not subject to public or open records laws, except as provided in Subsections C, D and E of 16.19.29.9 NMAC.

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained is not disclosed to persons except as in Subsection C, D, and E of this 16.19.29.9 NMAC.

C. After receiving a complaint, the board inspectors shall review the relevant prescription information. If there is reasonable cause to believe a violation of law or breach of professional standards may have occurred, the board shall notify the appropriate law enforcement or professional licensing, certification or regulatory agency or entity, and provide prescription information required for an investigation.

D. The board will establish written protocols for reviewing the prescription data reported. These protocols will be reviewed and approved by the board as needed but at least once every calendar year. These protocols will define information to be screened, frequency and thresholds for screening and the parameters for using the data. Data will be used to notify providers, patients and pharmacies to educate, provide for patient management and treatment options.

E. The board shall be authorized to provide data in the prescription monitoring program to the following persons:

(1) persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(2) an individual who request's their own prescription monitoring information in accordance with procedures established under 61-11-2.D NMSA, 1978 and Subsection G of 16.19.6.23 NMAC;

(3) New Mexico medical board, New Mexico board of nursing, New Mexico board of veterinary medicine, New Mexico board of dental health care, board of examiners in optometry, osteopathic examiners board, acupuncture & oriental medicine board, and podiatry board for their licensees;

(4) professional licensing authorities of other states if their licensees practice in the state or prescriptions provided by their licensees are dispensed in the state;

(5) local, state and federal law enforcement or prosecutorial officials engaged in an ongoing investigation of an individual in the enforcement of the laws governing licit drugs;

(6) human services department regarding medicaid program recipients;

(7) metropolitan, district, state or federal court(s) under grand jury subpoena or criminal court order;

(8) personnel of the board for purposes of administration and enforcement of this regulation, or 16.19.20 NMAC **or;**

(9) the controlled substance monitoring program of another state or group of states with whom the state has established an interoperability agreement;

(10) a parent to have access to the prescription records about his or her minor child, as his or her minor child's personal representative when such access is not inconsistent with state or other laws.

F. The board shall provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients and persons who

have received prescriptions from dispensers. [16.19.29.9 NMAC - N, 07-15-04; A, 06-11-11]

16.19.29.10 REPORTS: A written request will be filed with the board prior to release of a report.

A. Persons listed in Paragraphs (1) through [~~(5)~~] **(10)** of Subsection [~~D~~] **E** of 16.19.29.9 NMAC must submit a written request listing the information for the report. [~~Practitioners, agencies and/or boards or commissions should prepare the request on letterhead.~~]

B. [~~Written~~] Reports will be prepared and delivered to the requesting person via U.S. mail**, facsimile, or other electronic means.**

C. Reports may be provided by secured electronic means after verification of electronic request.

D. The [~~board will develop a system that provides timely access to prescription information to the healthcare providers using current technologies~~] **program will produce reports for the board that evaluate the effectiveness of the program and assist in identifying diversion of controlled substances. The program will produce statistical reports to evaluate the dispensing of controlled substances and utilization of the program. These reports will be able to provide data on:**

(1) number of solicited reports from prescribers for a specified time period;

(2) number of solicited reports from a specified prescriber for a specified time period;

(3) number of solicited reports from pharmacies for a specified time period;

(4) number of solicited reports from a specified pharmacy for a specific time period;

(5) number of solicited reports from other unauthorized individuals for a specified time period;

(6) number of individuals receiving a prescription for a specified schedule for a specified time period;

(7) threshold report of number of individuals receiving a prescription for a specified schedule from 6 or more prescribers or 6 or more pharmacies within a specified time period;

(8) number of solid dosage units for a specified schedule for pain relievers, tranquilizers, stimulants and sedatives for a specified time period;

(9) list of individual prescriptions for a specified zip-code or state code;

(10) number of prescriptions for a specified zip-code;

(11) number of dosage units for a specified drug and specified zip-code.

E. The board shall receive a quarterly program outcomes report from staff or contractors. A statistical analysis of the data that does not include protected information should be reported on the web site or in the newsletter.

[16.19.29.10 NMAC - N, 07-15-04; A, 06-11-11]

16.19.29.12 REGISTRATION FOR ACCESS TO PRESCRIPTION INFORMATION:

A. Practitioners with individual drug enforcement administration (DEA) issued numbers will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued to the practitioner. One subaccount per practitioner account is authorized for an agent of the practitioner. The agent designated by the practitioner will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued to the agent.

B. Pharmacies with DEA issued numbers will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued. Pharmacies will designate one individual who will complete and submit a hard copy written, signed and notarized application. After verification of submitted information, a username and password will be issued to the individual. Pharmacies will not be permitted to obtain a subaccount.

C. All registrations will be renewed every three years by completing and submitting a new application.

[16.19.29.12 NMAC - N, 07-15-04; 16.19.29.12 NMAC - N, 06-11-11]

16.19.29.13 INFORMATION EXCHANGE WITH OTHER PRESCRIPTION MONITORING PROGRAMS:

A. The New Mexico board of pharmacy may provide prescription monitoring information to other states' prescription monitoring programs and such information may be used by those programs consistent with the provisions of the rule.

B. The New Mexico board of pharmacy may request and receive prescription monitoring information from other states' prescription monitoring programs and may use such information under provisions of this rule.

C. The New Mexico board of pharmacy may develop the capability to transmit information to and receive information from other prescription monitoring programs employing the standards of interoperability.

D. The New Mexico board of pharmacy is authorized to enter into written agreements with other states' prescription monitoring programs or other entities hosting compatible information sharing technologies for the purpose of describing the terms and conditions for sharing of prescription information under this section.

[16.19.29.13 NMAC - N, 07-15-04; 16.19.29.13 NMAC - N, 06-11-11]

[~~16.19.29.12~~] **16.19.29.14 PENALTIES:**

A. A dispenser who knowingly fails to submit prescription monitoring information to the board as required by this regulation or knowingly submits incorrect prescription information shall be subject to disciplinary proceedings as defined in 61-11-20 NMSA.

B. A person authorized to have prescription monitoring information pursuant to this regulation who knowingly discloses such information in violation of this regulation shall be subject to criminal proceedings as described in 26-1-16.D and 26-1-26 NMSA.

C. A person authorized to have prescription monitoring information pursuant to this regulation who uses such information in a manner or for a purpose in violation of this regulation shall be subject to criminal proceedings as described in 26-1-16.D and 26-1-26 NMSA.

[16.19.29.14 NMAC - Rn, 16.19.29.12 NMAC, 06-11-11]

[~~16.19.29.13~~] **16.19.29.15 SEVERABILITY:** If any provisions of this regulation or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the regulation which can be given effect without the invalid provisions or applications, and to this end the provisions of this regulation are severable.

[16.19.29.15 NMAC - Rn, 16.19.29.13 NMAC, 06-11-11]

HISTORY OF 16.19.29 NMAC: [RESERVED]

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD
NOTICE OF PUBLIC MEETING AND STATE IMPLEMENTATION PLAN REVISION

The New Mexico Environmental Improvement Board ("Board") will hold a public hearing on August 1, 2011 at 9:00 a.m. in Room 317 at the State Capital in Santa Fe, New Mexico. The purpose of the hearing is to consider the matter of EIB 11-07 (R), proposed revisions to the New Mexico State Implementation Plan (SIP) under Section 110(a)(2) of the Federal Clean Air Act (CAA) for the revised National Ambient Air Quality Standard (NAAQS) for Lead.

The proponent of this regulatory adoption and revision is the New Mexico Environment Department ("NMED").

The purpose of the public hearing is to consider and take possible action on a petition from NMED regarding implementation of the federally promulgated revisions to the NAAQS for lead that were adopted by the U.S. Environmental Protection Agency (EPA) in November of 2008. Section 110(a)(2) of the CAA requires states to submit to the EPA Administrator an ''Infrastructure SIP'' that addresses the requirements of sections 110(a)(2)(A)--(M) of the CAA within 3 years after the promulgation of a NAAQS. This SIP is a compilation of elements that demonstrates how the State of New Mexico will implement, maintain and enforce the revised lead NAAQS. The NMED will host an informational open house on the proposed Lead Infrastructure SIP at the NMED Air Quality Bureau Office, 1301 Siler Rd, Building B, Santa Fe, New Mexico 87507, from 12:00p.m.-3:00p.m. on June 6, 2011.

The proposed Lead Infrastructure SIP revision may be reviewed during regular business hours at the NMED Air Quality Bureau office, 1301 Siler Road, Building B, Santa Fe, New Mexico. Full text of NMED's proposed SIP revision is available on NMED's web site at www.nmenv.state.nm.us, or by contacting Gail Cooke at (505) 476-4319 or gail.cooke@state.nm.us.

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

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

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

Notices of intent for the hearing must be received in the Office of the Board not later than 5:00 pm on July 15, 2011, and should reference the docket number, EIB 11-07 (R), and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Felicia Orth, Acting Board Administrator
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room 3056-N
Santa Fe, NM 87502
Phone: (505) 827-0339, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by July 15, 2011 at the NMED, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed revised regulations at the conclusion of the hearing, or the Board may convene a meeting at a later date to consider action on the proposal.

End of Other Related Material Section

Submittal Deadlines and Publication Dates
2011

Volume XXII	Submittal Deadline	Publication Date
Issue Number 1	January 4	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 18	April 29
Issue Number 9	May 2	May 16
Issue Number 10	May 17	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30