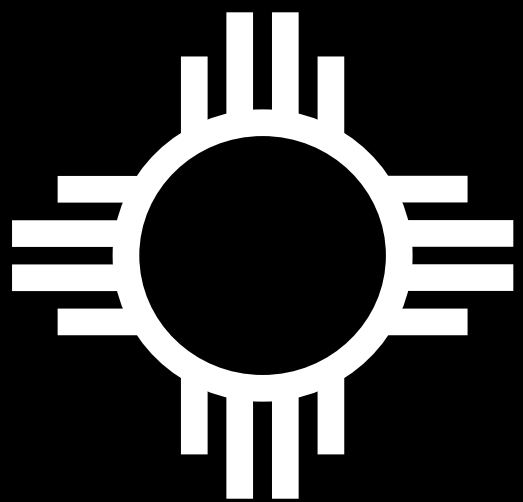


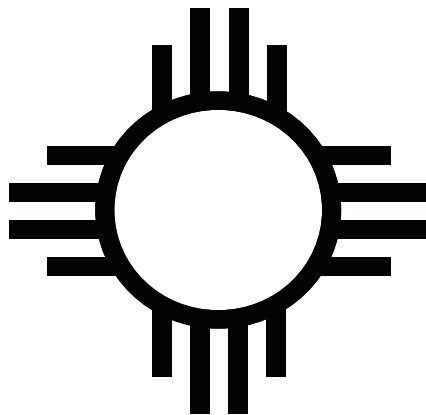
**NEW
MEXICO
REGISTER**



Volume XXII
Issue Number 12
June 30, 2011

New Mexico Register

Volume XXII, Issue Number 12
June 30, 2011



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2011

COPYRIGHT © 2011
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XXII, Number 12

June 30, 2011

Table of Contents

Notices of Rulemaking and Proposed Rules

Environmental Improvement Board

Notice of Public Hearing to Consider Proposed Amendments to 20.7.3 NMAC 429

Human Services Department

Medical Assistance Division

Notice of Public Hearing 429

Public Safety, Department of

Notice of Public Hearing 430

Adopted Rules

Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Agriculture, Department of

21.17.27 NMAC N Japanese Beetle Exterior Quarantine 433

Albuquerque-Bernalillo County Air Quality Control Board

20.11.21 NMAC A Open Burning 434

Economic Development Department

5.5.50 NMAC A Industrial Development Training Program 443

5.5.51 NMAC A Development Employment Funding for Film and
Multimedia Production Companies 450

5.5.52 NMAC A Development Pre-Employment Training for Film and
Multimedia Production Companies 452

Environmental Improvement Board

20.2.73 NMAC A Notice of Intent and Emissions Inventory Requirements 454

20.2.81 NMAC A Western Backstop Sulfur Dioxide Trading Program 456

20.9.2 NMAC A Solid Waste Management General Requirements 466

20.9.3 NMAC A Solid Waste Facility Permits and Registrations 469

Finance and Administration, Department of

Local Government Division

2.110.5 NMAC N Juvenile Adjudication Fund Grants to Local Governments 472

Human Services Department

Medical Assistance Division

8.200.400 NMAC A General Medicaid Eligibility 475

8.200.510 NMAC A Resource Standards 476

8.235.400 NMAC A Recipient Policies 476

8.235.600 NMAC A Benefit Description 476

Public Records, Commission of

1.18.569 NMAC R ERRDS, NM Organic Commodity Commission 477

Letter
Synopsis Approval Letter 477

1.18.420 NMAC A ERRDS, Regulation and Licensing Department (*synopsis*) 477

1.18.516 NMAC A ERRDS, Department of Game and Fish (*synopsis*) 478

1.18.630 NMAC A ERRDS, Human Services Department (*synopsis*) 478

1.18.954 NMAC A ERRDS, New Mexico Department of Agriculture (*synopsis*) 478

Real Estate Appraisers Board

16.62.1 NMAC	A	Real Estate Appraisers: General Provisions	479
16.62.2 NMAC	A	Application for Apprentice	480
16.62.8 NMAC	A	Educational Programs/Continuing Education	481
16.62.12 NMAC	A	Fees	481
16.65.2 NMAC	A	Registration Requirements	481

Regulation and Licensing Department

Construction Industries Division

14.7.6 NMAC	R	2009 New Mexico Energy Conservation Code	482
14.9.2 NMAC	R	2009 New Mexico Mechanical Code	482
14.10.4 NMAC	R	2008 New Mexico Electrical Code	482
14.7.6 NMAC	N	2009 New Mexico Energy Conservation Code	482
14.9.2 NMAC	N	2009 New Mexico Mechanical Code	483
14.10.4 NMAC	N	2008 New Mexico Electrical Code	486
14.8.2 NMAC	A	2009 New Mexico Plumbing Code	490

Secretary of State

1.10.34 NMAC	N	Voting Systems Storage, Custody and Maintenance	491
12.6.2 NMAC	A	Filing Provisions	492

Other Material Related to Administrative Law

Human Services Department

Medical Assistance Division

NMAC Chapter Name Change	497
------------------------------------	-----

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

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

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.7.3 NMAC.

The New Mexico Environmental Improvement Board (Board) will hold a public hearing beginning at 9:00 a.m. on September 1, 2011, and continuing as necessary on September 2 and 3 at the New Mexico State Capitol Building, Room 307, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to September 1, and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/oouts/eib.htm> prior to the hearing. The purpose of the hearing is to consider proposed amendments to Liquid Waste Disposal Rules, 20.7.3 NMAC proposed by Mr. Link Summers in EIB Docket Number 11-09(R), and by the Professional On-Site Wastewater Re-use Association in EIB Docket Number 11-12 (R), Petitions 11-10(R) and 11-11(R), originally consolidated for hearing with 11-09(R) and 11-12(R), have been withdrawn.

These proposed rule changes include addressing RV park wastewater, recognizing 20.7.3 as the official code with respect to liquid waste treatment and disposal, inspection of unpermitted systems, limits on NMED discretion, preservation of permits, photographic inspections and e-mail filings of permit documents.

In addition, the Board may make other changes as necessary to accomplish the purpose of providing public health and safety in response to public comments and evidence presented at the hearing.

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, copies of the proposed amendments are posted on the NMED website at <http://www.nmenv.state.nm.us/fod/LiquidWaste/>.

Written comments regarding the proposed revisions may be addressed to Ms. Felicia Orth at the above address, and should reference docket numbers EIB 11-09(R) and 11-12(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 August 15, 2011. The requirements for a notice of intent found at 20.1.1 NMAC may be modified by procedural orders entered in this matter, which may be obtained from the Administrator. 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;
- include a copy of the direct testimony of each technical witness in full narrative form;
- 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 August 15, and should reference the name of the regulation, the date of the hearing, and one or both docket numbers EIB 11-09 (R), and 11-12 (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 HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on August 1, 2011 at 10:00 a.m. in the ASD conference room, Plaza San Miguel, 729 St. Michael's Drive, Santa Fe.

The subject of the hearing is: Personal Care Option (PCO) Services. The Human Services Department (HSD), Medical Assistance Division (MAD or Medicaid), is proposing amendments to regulations 8.315.4 NMAC, *Personal Care Option Services*.

The following is a summary of the proposed changes:

1. The current PCO Service Guide, form MAD 055 was implemented on December 30, 2010 through a separate and final regulation process. The PCO Service Guide provides a narrative/worksheet that establishes service time ranges that are related to a PCO recipient's functional level as determined by a separate service assessment, pursuant to regulations at section 8.315.4.19, Assessments for Services. The PCO Service guide helps to ensure a more standard/accurate service time determination for PCO recipients.

The most significant proposed regulation change is the re-structure of the PCO Service Guide, which consolidates ten (10) types of separate PCO services to six (6). Under these proposed rules, no PCO service would be eliminated, but rather is combined with similar types of services to encourage multi-tasking and streamlining. The consolidation of tasks overall are reflective of reduced service time with the anticipation that streamlined functions will provide for a similar level of service to PCO recipients. Most PCO recipients will experience a reduction in PCO service times during the next service assessment; however, the

majority of these reductions are primarily related to Instrumental Activities of Daily Living (IADL) tasks rather than Activities of Daily Living (ADL) PCO tasks.

The proposed PCO Service Guide includes the following six (6) covered services: (1) Hygiene/Grooming; (2) Individual Bowel and Bladder; (3) Meal Preparation and Assistance; (4) Eating; (5) Household and Support Services; and (6) Supportive Mobility Assistance.

The current PCO Service Guide lists Physician Prescribed Skin Care as a standalone services. The proposed PCO Service Guide is revised to include this service in the Hygiene/Grooming task.

The current PCO Service Guide lists certain IADLs as standalone services (Support Services, Self-Administered Medication and Minor Maintenance of Assistive Devices - i.e. wheelchair and medical equipment). The time spent for these services can be combined into one overall grouping of tasks known as Household and Support Services. The time currently allotted for each standalone services appears to allow more time than typically needed for these tasks if these IADL tasks are combined into one category of similar services. In addition to these added tasks, all of the household cleaning, laundry, shopping, feeding service animals and errands are combined into this PCO service. The proposed PCO Service Guide reduces time associated with these tasks by streamlining these IADL services as multi-tasking can be done for many of these services.

Service time for a standalone Mobility Assistance task is difficult to calculate separately as assistance usually flows with each of the PCO tasks when tasks are being completed. In the proposed PCO Service Guide, Mobility assistance is now included in each of the six (6) PCO tasks. Service time in each task is expected to increase if a PCO recipient's mobility level decreases, however the inclusion of mobility into each of the applicable service grouping allows for streamlining of services and a reduction in the overall allocation of time, unless there is a demonstrated need for additional services/time.

In the proposed PCO Service Guide, Special Mobility Assistance is added as a standalone PCO service. This task provides for physical or verbal prompting and cueing limited to individuals without assistive device(s) that require additional mobility assistance, not covered with other PCO services including: (a) Ambulation - moving around inside or outside the residence or consumer's living area; (b) Transferring - moving to/

from one location/position to another; and (c) Repositioning - turning or moving an individual to another position who is bed bound to prevent skin breakdown;

2. The proposed regulations require a Managed Care Organization (MCO) to authorize additional time outside the PCO Service Guide if necessary, based on the consumer's medical and clinical need(s) and related to the consumer's risk of institutionalization. Related to this regulation change, the Department will modify the PCO recipient notifications to explain when service time may exceed the PCO Service Guide and how to request additional service time;

3. The proposed regulation changes the reference of the Income Support Division (ISD) 379 Medical Assessment form to a MAD form;

4. The proposed regulations add a requirement for a current History & Physical (H&P) at each Level of Care (LOC) determination or annual redetermination. Current is defined as having been completed within twelve (12) months of the assessment date;

5. The proposed regulations allow an existing Nursing Facility (NF) LOC determination from another NF requiring LOC program to transfer to PCO LOC eligibility for any new PCO applicant (i.e. current NF LOC from a Home and Community-Based Services (HCBS) waiver or institutional care facility Medicaid);

6. The proposed regulations clarify that a prior authorization (PA) must be sent to the PCO agency and that the authorization cannot extend beyond the LOC authorization period;

7. The proposed regulations clarify that a PCO consumer who disagrees with the authorized number of hours may utilize the CoLTS MCO grievance and appeal process when enrolled in CoLTS and the State's fair hearing process pursuant to 8.352.2 NMAC, Recipient Hearings, consecutively or concurrently; and

8. The proposed regulations clarify that a PCO recipient may receive continuation of benefits at the previous level, pending an MCO grievance or appeal and the State fair hearing decision. In addition, the consumer may be responsible for repayment of the cost of the services furnished while a State fair hearing was pending, to the extent that the services were furnished solely because of this requirement for continuation during the State fair hearing process. The State for FFS or the MCO for CoLTS may recover

these costs from the member per federal regulation.

Interested persons may submit written comments no later than 5:00 p.m., August 1, 2011, to Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

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

Copies of the Human Services Register and their proposed rules are available for review on our Website at www.hsd.state.nm.us/mad/registers/2011 or by sending a self-addressed stamped envelope to Medical Assistance Division, Long Term Services and Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

NOTICE OF PUBLIC HEARING

The New Mexico Department of Public Safety (NMDPS) will be holding a Public Hearing for the sake of receiving comments on amendments to the Edwards Byrne Memorial Justice Assistance Grant (JAG). The hearing will be held at 1:30 P.M. on July 13, 2011 at the New Mexico Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, New Mexico 87507. The amendments will include, but is not limited to, changes, additions, deletions, and clarifications of the application process.

Copies of the proposed amendments shall be made available to the public ten days prior to the Public Hearing and may be obtained by calling 505-827-9112. The new Rule will be

posted on the Department of Public Safety's website and may be accessed, free of charge, from the following website: <http://www.dps.nm.org/>

Comments on the amendments are invited. Oral comments may be made at the hearing, or written comments may be submitted by mail to the Grants Management Bureau, New Mexico Department of Public Safety, Post Office Box 1628, Santa Fe, New Mexico 87504-1628, received no later than July 18, 2011, at 5:00 pm. Any individual with a disability, who is in need of a reader, amplifier, or other form of auxiliary aid or service in order to attend or participate in the hearing, should contact Evelyn Romero, 505-827-3347 at least ten (10) days prior to the hearing.

End of Adopted Rules Section

This page intentionally left blank

Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

**TITLE 21 AGRICULTURE AND
RANCHING
CHAPTER 17 PEST, DISEASE, AND
WEED CONTROL
PART 27 JAPANESE BEETLE
EXTERIOR QUARANTINE**

21.17.27.1 ISSUING AGENCY:
New Mexico State University, New Mexico
Department of Agriculture,
[21.17.27.1 NMAC - N, 06/30/11]
[MSC 3189, Box 30005, Las Cruces, New
Mexico 88003-8005, Telephone No. (575)
646-3007]

21.17.27.2 SCOPE: Part 27 shall
apply to all persons transporting regulated
articles into and through New Mexico.
[21.17.27.2 NMAC - N, 06/30/11]

**21.17.27.3 S T A T U T O R Y
AUTHORITY:** Granted to the board of
regents of New Mexico state university
under the Pest Control Act, Chapter 76,
Article 6, Sections 1 through 9 NMSA 1978
compilations.
[21.17.27.3 NMAC - N, 06/30/11]

21.17.27.4 D U R A T I O N :
Permanent.
[21.17.27.4 NMAC - N, 06/30/11]

21.17.27.5 EFFECTIVE DATE:
June 30, 2011, unless a later date is cited at
the end of a section.
[21.17.27.5 NMAC - N, 06/30/11]

21.17.27.6 OBJECTIVE: The
objective of Part 27, Chapter 17 is to reduce
the risk of introducing Japanese beetle into
New Mexico.
[21.17.27.6 NMAC - N, 06/30/11]

21.17.27.7 DEFINITIONS:

A. "Board" means the
board of regents of New Mexico state
university or any officer or employee to
whom authority to act in their stead has been
or hereafter may be delegated.

B. "Free of soil" individual
soil "clump(s)" less than ½ inch in diameter.

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

D. "Certificate" an
authenticated document issued by the
department of agriculture affirming
compliance with quarantine restrictions
affecting movements of regulated articles,
indicating articles are believed to be free of

the live quarantine pest.

E. "Infestation" means
actually infested or infected with a pest or
so exposed to infestation that it would be
reasonable to believe that an infestation
exists.

F. "Director" means
the director of New Mexico department of
agriculture.
[21.17.27.7 NMAC - N, 06/30/11]

**21.17.27.8 JAPANESE BEETLE
EXTERIOR QUARANTINE:**

A. Pest: Japanese beetle,
Popillia japonica.

**B. Areas under
quarantine:** States of Alabama, Arkansas,
Colorado, Connecticut, Delaware, Georgia,
Illinois, Indiana, Iowa, Kansas, Kentucky,
Louisiana, Maine, Maryland, Massachusetts,
Michigan, Minnesota, Mississippi, Missouri,
Nebraska, New Hampshire, New Jersey,
New York, North Carolina, North Dakota,
Ohio, Oklahoma, Pennsylvania, Rhode
Island, South Carolina, South Dakota,
Tennessee, Texas, Vermont, Virginia, West
Virginia, and Wisconsin.

**C. Any areas not listed in
Subsection B of 21.17.27.8 NMAC where
Japanese beetle has been found or areas
where Japanese beetle is believed to occur
shall be included as an area under quarantine.**

D. Regulated articles:

(1) Japanese beetle in any living
state of development.

(2) Grass and grass sod, regardless
of container size.

(3) Nongramineous plants with
roots and soil or soilless medium attached
and growing in
containers that have a horizontal surface
area equal to or greater than 113 square
inches (i.e. 12 inch diameter pot) or shipped
as "ball and burlap" with rootballs equal
to or greater than 12 inches in diameter;
houseplants grown in the home and not for
sale are exempt.

(4) Bulbs, corms, tubers, and
rhizomes, unless free of soil.

(5) Any other product, articles,
or means of conveyance of any character
whatsoever, not covered by this subsection,
are regulated articles when it is determined
by the department that they present a risk of
spreading Japanese beetle and the person in
possession thereof has been so notified.
[21.17.27.8 NMAC - N, 06/30/11]

21.17.27.9 RESTRICTIONS:

**A. All regulated articles
are prohibited entry into New Mexico from
areas under quarantine unless they have
the required certificate. A phytosanitary
certificate or compliance agreement issued**

by an authorized state agricultural official of
the origin state must accompany regulated
articles moved from the quarantined area
into New Mexico. Compliance agreements
must be preapproved by the New Mexico
state plant regulatory official prior to
shipment. The certificate must state that the
regulated article is certified free of Japanese
beetle based on one of the following options.

(1) Regulated article originated in
certified Japanese beetle-free premises in a
quarantined area and has not been exposed to
an infestation while within the quarantined
area. Premises approved by the state plant
regulatory official include Japanese beetle-
free greenhouse or screenhouse that has
been inspected annually and approved by
an authorized state agricultural official of
the origin state as being Japanese beetle
free in accordance to criteria specified in the
U.S. Japanese beetle harmonization plan,
Appendix 1, "Production in an approved
Japanesefree greenhouse/screenhouse." The
following additional declaration shall appear
on the state phytosanitary certificate, "The
rooted plants (or crowns) were produced in
an approved Japanese beetle-free greenhouse
or screenhouse."

(2) Regulated article production
cycle completed and shipped during an
adult Japanese beetle-free period. The adult
Japanese beetle-free period will be based on
recent trapping information conducted by an
authorized state agricultural official of the
origin state for that location. Only plants
grown in sterilized and soilless medium will
be considered for entry into New Mexico
under this certification. The following
additional declaration shall appear on the
state phytosanitary certificate, "The plants
were produced and shipped outside the adult
Japanese beetle flight period."

(3) Regulated article treated
to destroy Japanese beetle infestations
in accordance with the *U.S. Japanese
beetle harmonization plan*, Appendix 1,
"application of approved regulatory
treatment." The following additional
declaration shall appear on the state
phytosanitary certificate, "The rooted plants
were treated to control *Popillia japonica*,
in accordance to the criteria for shipment
to Category 1 states as provided in the *U.S.
domestic Japanese beetle harmonization
plan*, or treated using a method approved
by the New Mexico state plant regulatory
official."

(4) Regulated article subject to
origin detection survey. Regulated articles
originating from specific counties not infested
with Japanese beetle and within infested
states may be accepted if the county of origin
is shown not to be infested with Japanese
beetle based on current and historic adult

surveys. An authorized state agricultural official of the origin state must reapply annually in writing to the New Mexico state plant regulatory official for inclusion of counties under this option. Decision by the department to approve shipment of regulated articles under this option will be based on the results from adult surveys conducted by the department of agriculture of the originating state. Surveys to detect Japanese beetle adults shall be conducted at each growing location and throughout the county. The following additional declaration shall appear on the state phytosanitary certificate, "The plants were produced and shipped from an area not found to be infested with Japanese beetle in accordance with the New Mexico's Japanese Beetle Exterior Quarantine." Requests for approval of regulated articles under this option shall include:

(a) name of the county and nurseries requesting approval;

(b) survey information and results that include trap locations for nursery and county of origin (i.e. maps, GPS coordinates), dates of deployment and trap maintenance, survey methodology, and results;

(c) historic information regarding Japanese beetle surveys and related information relevant to determining the status of Japanese beetle infestation levels at the nursery and county levels; and

(d) number of miles from each nursery to nearest Japanese beetle positive trap catch or known population which would include relevant counties in adjacent states.

(5) Other treatments or methods of mitigation not described therein may be submitted in writing by an authorized state agricultural official of the origin state to the department for review prior to shipment into New Mexico.

B. State phytosanitary certificates and compliance agreements shall be securely attached to the outside of the container in which the articles are moved, except where the certificate is attached to the shipping document and the regulated articles are adequately described on the shipping document or on the certificate.

C. The director may make exceptions, modifications, or additions to restrictions as needed or at the request of individual departments of agriculture for the purpose of addressing specific issues. [21.17.27.9 NMAC - N, 06/30/11]

21.17.27.10 EXCEPTIONS: None. [21.17.27.10 NMAC - N, 06/30/11]

21.17.27.11 DISPOSITION OF VIOLATIONS: Failure to comply with the requirements as stated above shall be a violation of this rule and subject to penalties as provided under Chapter 76, Article 6, Section 9, NMSA 1978. The board is granted the authority to direct the disposal, removal,

or other means necessary to mitigate the threat of noncompliant regulated articles.

[21.17.27.11 NMAC - N, 06/30/11]

21.17.27.12 LIABILITY DISCLAIMER: The board disclaims liability for any costs incident to inspection or compliance with the provisions of this rule.

[21.17.27.12 NMAC - N, 06/30/11]

HISTORY OF 21.17.27 NMAC: [RESERVED]

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

This is an amendment to 20.11.21 NMAC, amending Sections 1, 2, 3, 7, 9-15, and 17-21, effective July 11, 2011.

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

[6/14/71. . .12/1/95; 20.11.21.1 NMAC - Rn, 20 NMAC 11.21.I.1, 10/1/02; A, 7/11/11]

20.11.21.2 SCOPE:

A. [~~This part~~] 20.11.21 NMAC is applicable to sources within Bernalillo county.

B. Exempt: [~~This part~~] 20.11.21 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque - Bernalillo county air quality control board lacks jurisdiction.

[12/1/95; 20.11.21.2 NMAC - Rn, 20 NMAC 11.21.I.2, 10/01/02; A, 12/31/03; A, 7/11/11]

20.11.21.3 STATUTORY AUTHORITY: [~~This part~~] 20.11.21 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; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4.

[6/14/71. . .12/1/95; 20.11.21.3 NMAC - Rn, 20 NMAC 11.21.I.3, 10/1/02; A, 12/31/03; A, 7/11/11]

20.11.21.7 DEFINITIONS: In addition to the definitions in Section 20.11.21.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in [~~this Part~~] 20.11.21 NMAC

shall govern.

A. "Agricultural burning" means the burning of crop residues for field preparation or that is otherwise used for the production of a crop.

B. "Alternative to burning" means a treatment employing manual, mechanical, chemical, or biological methods to manage vegetation [~~and/or~~] or fuel loads, or land management practices that treat vegetation (fuel) without using fire. A treatment or practice may only be considered an alternative if it has successfully been used to take the place of fire for at least three consecutive years. Suggested alternatives to burning are listed in Section 20.11.21.18 NMAC.

C. "Biomass utilization" means any method of removing and taking biomass material to a landfill, burn facility, a power generation facility, an ethanol production facility, a redistribution facility, a fiberboard [~~and/or~~] or particleboard facility, using the material as compost or mulch, using it as animal bedding, for erosion control, etc.

D. "Broadcast burn" means the controlled application of fire to wildland fuels in their natural or modified state over a predetermined area. Broadcast burns do not include the burning of wildland fuels that have been concentrated in piles by manual or mechanical methods.

~~[D:]~~ **E. "Burn down"** means that period of time, not to exceed three (3) hours, after a no-burn period is announced by the director, within which period a person operating a solid fuel heating device must cease combustion within any solid fuel heating device by withholding fuel or modifying the air-to-fuel ratio.

~~[E:]~~ **E. "Burner"** means the person who is responsible for or in control of a prescribed fire project that is regulated under [~~this part~~] 20.11.21 NMAC.

~~[F:]~~ **G. "Burn project"** means, in prescribed fires or in wildland fire use, a burn regulated by 20.11.21.15 NMAC [~~regulated under this Part~~] on an area that is contiguous and is being treated or managed for the same land management objectives.

~~[G:]~~ **H. "Class I area"** means all international parks, national wilderness areas which exceed 5,000 acres, national memorial parks which exceed 5,000 acres, and national park areas which exceed 6,000 acres in size and which were in existence on the date of enactment of the Clean Air Act Amendments of 1977. The extent of the areas designated as class I shall conform to any changes in the boundaries of such areas, which occurred [after] subsequent to the date of the enactment of the Clean Air Act Amendments of 1977 or 1990.

I. "Department" means the Albuquerque environmental health department, which is the administrative

agency of the Albuquerque - Bernalillo county air quality control board.

J. **“Director”** means the administrative head of the Albuquerque environmental health department or a designated representative(s).

[H:] K. **“Division”** means the city of Albuquerque air quality division or its successor agency.

[F:] L. **“Emission reduction technique”** or **“ERT”** means a control strategy used to reduce smoke from a prescribed fire that results in less smoke than would have been produced if the emission reduction technique were absent. A control strategy used for a period of fewer than three years is an emission reduction technique; if the control strategy replaces fire for three consecutive years or more, the control strategy is an alternative to burning.

[F:] M. **“Environmentally non-essential burning”** means the open burning of any unwanted combustible material which could otherwise reasonably be altered, destroyed, reduced or removed to a suitable disposal site without the potential to cause environmental harm or damage.

[K:] N. **“Environmentally poor burning substances”** include but are not limited to: refuse, paper, rubbish, books, magazines, fiberboard, packaging, rags, fabrics, animal waste, waste oil, liquid or gelatinous hydrocarbons, tar, paints and solvents, chemically treated wood, plastic or rubber, office records, sensitive or classified wastes, hazardous or toxic substances, interiors of wrecked vehicle bodies or other materials which are difficult to burn without producing significant amounts of noxious and/or or toxic fumes or dense smoke.

[E:] O. **“Health alert”** means an air pollution alert, warning or emergency issued by the department.

[M:] P. **“Hot torch”** means a wand or burner fueled by propane, butane or compressed natural gas.

[N:] Q. **“Hot torch burning”** means burning of individual weeds at the point of the hot torch.

[O:] R. **“No-burn period”** means a period of time, declared by the director, during which no person with authority or power to control the operation of a solid fuel heating device shall allow the operation of a solid fuel heating device to continue, following a burn down period, within the wood smoke impacted area, unless the device is a wood heater that has been emission certified by the EPA. Exemptions may be granted by the director per 20.11.22.2 NMAC. No-burn periods may be declared any time from October 1 through February 28. The director shall declare a no-burn period after reviewing available meteorological data, air pollution monitoring data and other relevant information and determining that expected

atmospheric conditions will not adequately disperse wood smoke.

[P:] S. **“Open burning”** means the combustion of any substance which is not confined in a device having controllable fuel/air mixture capable of achieving nearly complete combustion, and from which combustion products are discharged into the open air without passing through a stack, duct, chimney, or vent.

[Q:] T. **“PB-I”** or **“level I prescribed burn”** means a smoke management burn project that emits less than one ton of PM₁₀ emissions per day or burns less than 5,000 cubic feet pile volume of vegetative material per day.

[R:] U. **“PB-II”** or **“level II prescribed burn”** means a smoke management burn project that emits one ton or more of PM₁₀ emissions per day or burns 5,000 cubic feet or more pile volume of vegetative material per day.

[S:] V. **“Pile”** means vegetative materials that have been relocated and heaped together either by hand or machinery.

[T:] W. **“Pile volume”** means the gross volume of a pile, including the air space between solid constituents, as calculated from the overall dimensions and shape of the pile.

[U:] X. **“PM₁₀ emissions”** or **“PM₁₀”** means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air, as measured by the reference method in 40 CFR Part 50, Appendix J, or equivalent method approved by the EPA.

[V:] Y. **“Population”** means the total number of individuals occupying an area. Locations for individuals within an area include, but are not limited to, open campgrounds, single-family dwellings, hospitals, schools in use, villages, and open places of employment.

[W:] Z. **“Prescribed fire”** or **“prescribed burn”** or **“PB”** means any fire ignited by any person to meet specific non-agricultural land management objectives. For the purposes of [this regulation] 20.11.21 NMAC, wildland fire use is considered a prescribed fire.

[X:] AA. **“Public notification”** means any method that communicates burn information to the burners, air regulators, Bernalillo county fire department, the local fire authority, and to the general public.

[Y:] BB. **“Research and development activities”** means scientific experimentation using open burning to prove a concept or produce information useful in planning.

[Z:] CC. **“Vegetative material”** means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs,

millings, shavings, grass, grass clippings, weeds, leaves, conifer needles, bushes, shrubs, clippings from bushes and shrubs, and agricultural plant residue.

[AA:] DD. **“Ventilation index”** means a technical rating used to establish the potential for smoke or other pollutants to ventilate away from its source.

[BB:] EE. **“Ventilation index category”** means a category in the ventilation index that is determined as provided in Section 20.11.21.17 NMAC and is rated as excellent, very good, good, fair or poor.

[CC:] FF. **“Wildfire”** means an unplanned and/or or unwanted fire that burns vegetative material in a natural or modified state.

[DD:] GG. **“Wildland”** means an area in which there is minimal development, except for roads, railroads, power lines and similar utilities and transportation facilities. Structures, if any, are widely scattered.

[EE:] HH. **“Wildland fire use”** means the management of wildfire within a wildland that is ignited by natural forces, such as by lightning or volcanic eruption, following a decision to allow the wildfire to burn to accomplish specific pre-stated resource objectives in predefined geographic areas, also known as fire use, wildfire use, prescribed natural fire, and fire for resource benefit.

[FF:] II. **“Winter pollution advisory season”** or **“no-burn season”** means the period from October 1st through February 28th each year when no-burn calls are made. The no-burn call is a control strategy designed to protect the air quality in Bernalillo county. This strategy helps mitigate particulate matter and carbon monoxide build up during the colder months of the year when temperature inversions trap pollutants closer to ground level.

[GG:] JJ. **“Wood smoke impacted area”** means that portion of Bernalillo county that is the most adversely affected by the burning of wood during atmospheric conditions that the director concludes may not adequately disperse wood smoke. The wood smoke impacted area is bounded on the north and south by the Bernalillo county line, on the west by the universal transverse meridian (UTM) line 337000mE and on the east by the UTM line 367000mE, Zone 13.

[1/3/85. . .6/16/92, 12/1/95; 20.11.21.7 NMAC - Rn, 20 NMAC 11.21.I.7, 10/1/02; A, 12/31/03; A, 7/11/11]

20.11.21.9 SAVINGS CLAUSE: Any amendment to 20.11.21 NMAC, [which] that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance or 20.11.21 NMAC. Prosecution for a violation

under a prior statute, ordinance or regulation shall be governed and prosecuted under the statute, ordinance or regulation in effect at the time the violation was committed.

[12/1/95; 20.11.21.9 NMAC - Rn, 20 NMAC 11.21.I.9 & A, 10/1/02; A, 12/31/03; A, 7/11/11]

20.11.21.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of [this-Part] 20.11.21 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of [this-Part] 20.11.21 NMAC.

[12/1/95; 20.11.21.10 NMAC - Rn, 20 NMAC 11.21.I.10, 10/1/02; A, 7/11/11]

20.11.21.11 DOCUMENTS: Documents incorporated and cited in [this-Part] 20.11.21 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.21.11 NMAC - Rn, 20 NMAC 11.21.I.11 & A, 10/1/02; A, 7/11/11]

20.11.21.12 OPEN BURNING PROHIBITED:

A. Open burning on private or public property (including burning of environmentally poor burning substances and vegetative materials), is prohibited in Bernalillo county unless authorized under Section 13, 14, or 15 of 20.11.21 NMAC. In addition to complying with 20.11.21 NMAC, ~~[all open burning shall comply with applicable local fire department requirements]~~ every person who plans to conduct open burning shall obtain all applicable permits and comply with all applicable restrictions of the Bernalillo county fire department and the Albuquerque fire department, prior to burning.

B. Compliance with 20.11.21 NMAC shall not relieve any person from complying with all other applicable statutes, ordinances and regulations.

C. Open burning allowed under Sections 13, 14, or 15 of 20.11.21 NMAC shall be suspended during declared “no burn periods” during the winter pollution advisory season ~~[and/or] or~~ when an air pollution health alert is issued ~~[unless a waiver has been granted, following the general process provided in 20.11.21.15 NMAC].~~ A waiver from the no burn restriction may be granted for extenuating circumstances by following the process in Subsection D of 20.11.21.12 NMAC. A no burn waiver may be rescinded in the event of a health alert.

D. The burner may apply for a waiver by submitting a written application for waiver to the department at least two weeks prior to the planned burn event. The burner shall document the reasons for requesting the waiver in the application for a waiver. The department shall notify the burner no later than one week prior to the planned burn event whether the waiver is granted or denied, and, if denied, the reasons for the denial. The department shall consider each waiver request on a case-by-case basis. An applicant for a waiver may challenge the department’s denial of a waiver by following the procedures established in 20.11.21.21 NMAC. A person adversely affected by the department’s granting of a waiver may challenge the department’s decision by following the procedures established in Subsection B of 20.11.21.21 NMAC.

[1/3/85, 12/1/95; 20.11.21.12 NMAC - Rn, 20 NMAC 11.21.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.21.II.1, 10/1/02; A, 12/31/03; A, 7/11/11]

20.11.21.13 CONDITIONALLY ALLOWED OPEN BURNING WITH A PERMIT:

A. Open burning may be allowed for the purposes described in Table I if, prior to burning, an open burning permit has been obtained from: 1. the Albuquerque environmental health department (as [set forth in] required by Subsections B and C of 20.11.21.13 NMAC) [before the fire is ignited]; and 2. the Bernalillo county fire department or the Albuquerque fire department as applicable.

**Table I
OPEN BURNING PERMITS FOR MULTIPLE AND SINGLE EVENTS**

Permit Basis		Purpose and Conditions
Multiple Event	Single Event	
X	X	1. Timber and forest management ([single-event] permit required for burns one-quarter acre through 10 acres in size, or up to 1000 cubic feet of pile volume per day).
	X	2. Disease control of dead animals and plants.
X	X	3. Research and development activities (single-event permit required for burns of 2,000 gallons or more liquid fuel or 5,000 pounds or more solid fuel).
[X] Up to 2,000 lbs	Greater than 2,000 lbs	4. Disposal [by burning] of explosives <u>by burning</u> , to avoid hazards of transport or handling.
[X] Up to 2,000 lbs	[X] Greater than 2,000 lbs	5. <u>Above-ground</u> detonation of more than 20 pounds of explosives [(single-event) permit required for detonation of more than 200 pounds].
Up to 35,000 lbs	Greater than 35,000 lbs	6. <u>Below-ground</u> detonation of more than 20 pounds of explosives.

Permit Basis		Purpose and Conditions
Multiple Event	Single Event	
X	X	[6:] 7. Ignition of rocket motors containing more than 4,000 pounds fuel (single-event permit required for motors containing more than 8,000 pounds fuel).
X		[7:] 8. Fire fighter and rescue training (fuel and conditions appropriate for the activity). No environmentally poor burning substances may be burned unless essential to simulate the needed training conditions. Training burns shall comply with 20.11.64.11 NMAC and 40 CFR Part 61, <u>National Emission Standards for Hazardous Air Pollutants</u> , Subpart M, [regarding] <i>National Emission Standard for Asbestos</i> .
X	X	[8:] 9. Hot torch burning of weeds along ditches, channels, public rights of way, or other <i>public property</i> .
X	X	[9:] 10. Agricultural burning ([single event] permit required for burns one-quarter acre through 10 acres in size, or up to 1000 cubic feet of pile volume per day).
	X	[10:] 11. Any special condition which would otherwise be prohibited but for which there is an unusual need where burning would best serve the public interest overall.

B. A person seeking a multiple or single event permit for the purposes described in Table I shall deliver the following information to the department in letter form or by a department approved electronic notification method at least five business days in advance of the single or multiple event burn:

- (1) the requestor’s name, address, and telephone number; ~~[and]~~
- (2) location where burning is to be conducted; ~~[and]~~
- (3) type and quantity of ignitable material and fuel; and
- (4) additional required information:
 - (a) date(s) when the burning is to be conducted; ~~[and]~~
 - (b) for multiple burn events, the estimated number, character, and schedule of fires to be conducted; ~~[and]~~
 - (c) general description of method to ignite, maintain, control, and terminate the burning; ~~[and]~~
 - (d) reasons why the requestor believes the burning is necessary; ~~[and]~~
 - (e) what alternatives to burning have been considered and why they were not chosen instead of burning; and
 - (f) for multiple event permits, the number and character of similar fires conducted during the previous permit cycle for which renewed approval is sought.

(5) In the event of an emergency necessitating a single event permit, the above process may be handled by telephone if the department is in agreement and the information is promptly delivered to the department in writing. In case of such emergency, the five-business-day notice requirement may be waived at the discretion of the department. Information supplied to the department relative to planned burning shall be construed to be part of the conditions of the permit issued pursuant thereto. Any later need to deviate from the original plan must be reported to and approved by the department in order to maintain the validity of the permit.

C. Upon receipt of a request for a single event or multiple event open burning permit, the department shall evaluate the application and decide whether to grant the permit, deny the permit or grant the permit with additional conditions that the department believes to be in the best interest of the local community and consistent with the board’s ~~[goal, of eliminating;]~~ intent, to eliminate “environmentally non-essential burning”. Multiple event permits shall only be renewed by the department following a re-evaluation of all the information provided in the renewal request. The department shall consider the need to burn, anticipated atmospheric conditions and other factors the department determines are relevant.

D. ~~[Within 24 hours of receipt of the applicant’s request, the department shall notify the applicant by phone, electronically or in writing, that the department has received the request.]~~ After evaluation of the applicant’s request, the department shall respond to the applicant at least 24 hours in advance of the scheduled open burn event in writing or by a department-approved electronic notification method advising the applicant of its findings, including any additional conditions deemed necessary. In an emergency, preliminary information regarding the department’s decision should first be telephoned to the applicant if possible, to expedite issues of immediate need.

E. If an applicant for a permit under ~~[this subsection]~~ 20.11.21.13 NMAC is not satisfied with either the conditions or denial of the applicant’s request, the applicant may request an administrative hearing on the merits before the board consistent with 20.11.21.21 NMAC.

F. Any multiple or single event permit issued under this ~~[section]~~ 20.11.21.13 NMAC may be revoked or suspended if the applicant fails to comply with the permit provisions therein, and the permittee may be subject to enforcement actions.

G. ~~[All permits issued under this section shall expire when specified or not later than one year from the date of issuance.]~~ For permits issued pursuant to 20.11.21.13 NMAC: Single-event permits shall only be valid for one month and multiple-event permits shall only be valid for one year, unless stipulated otherwise in the permit.

[12/1/95; 20.11.21.13 NMAC - Rn, 20 NMAC 11.21.II.2, 10/1/02; A, 12/31/03; A, 7/11/11]

20.11.21.14 CONDITIONALLY ALLOWED OPEN BURNING NOT REQUIRING A PERMIT FROM THE ENVIRONMENTAL HEALTH DEPARTMENT: Open burning is allowed for the purposes set forth in Table II ~~[providing that]~~ if: 1. the burn complies with ~~[local fire and safety codes as well as]~~ the time requirements specified in Table II; and 2. prior to burning, the person planning to conduct open burning obtains all permits and complies with all restrictions required by the Bernalillo county fire department and

the Albuquerque fire department, as applicable (e.g. 25 feet from any structure; pile size no greater than three feet in diameter and two feet high; no offensive or objectionable smoke or odor emissions; atmospheric conditions or local circumstances that make such fires hazardous, etc.).

Table II
CONDITIONALLY ALLOWED OPEN BURNING

Type of Burning	Time Restrictions
1. Cooking food [not intended for resale].	No limit on time of day
2. Recreational or ceremonial bonfires.	
3. Dead and dry weed removal on private residential, commercial or industrial property, <u>and</u> hot torch weed control on private residential property[, provided that the amount of non-piled vegetative material shall not exceed 10 acres per day. Piled vegetative material, including material gathered in a pit or open container, shall be no more than 1,000 cubic feet of pile volume per day]. Burning in excess of these daily limits is subject to SMOKE MANAGEMENT; PRESCRIBED BURNS; WILDFIRES, 20.11.21.15 NMAC].	11 AM to 3 PM October through March 6 AM to 5 PM April through September
4. Small-scale fire extinguisher training (fewer than 50 participants)	No limit on time of day

[1/3/85. . .12/1/95; 20.11.21.14 NMAC - Rn, 20 NMAC 11.21.II.3, 10/1/02; A, 12/31/03; A, 7/11/11]

20.11.21.15 SMOKE MANAGEMENT; PRESCRIBED BURNS; WILDLAND FIRE USE; WILDFIRES UNDER SUPPRESSION: [This section] 20.11.21.15 NMAC applies to all [users of] persons who intend to use prescribed fire [that intend] to burn [or do burn] more than 10 acres or more than 1,000 cubic feet of pile volume of vegetative material per day. Specified portions of [this section] 20.11.21.15 NMAC also apply to the land manager or owner of property on which a wildfire occurs.

A. Materials allowed to be burned: Only vegetative material shall be burned, with the following exceptions:

(1) auxiliary fuel or incendiary devices may be used to start the burning authorized by [this section] 20.11.21.15 NMAC, provided that:

(a) no oil heavier than No. 2 diesel shall be used; and

(b) no more than the minimum amount of auxiliary fuel necessary to start the fire shall be used.

(2) Polyethylene sheeting may be burned with the vegetative materials, provided that:

(a) the sheeting has been covering piled vegetative material for at least one month prior to burning; and

(b) the amount of sheeting burned is no more than the minimum necessary to cover the pile; and

(c) removal of the sheeting before burning is impractical; and

(d) the burner is able to provide evidence, such as purchase records or package labeling, that establish the sheeting is polyethylene and not some other form of plastic.

B. Requirements for PB-I: For any burn project expected to produce less than one ton of PM₁₀ emissions per day or burn less than 5,000 cubic feet pile volume per day, all of the following requirements shall be met apply.

(1) The burner shall burn only under appropriate dispersion conditions. In order to accomplish this objective, the burner shall follow either Subparagraph (a) or (b) of Paragraph (1) of Subsection B of 20.11.21.15 NMAC.

(a) The burner shall:

(i) ignite burns only during the hours from one hour after sunrise until one hour before sunset; the burner may apply for a waiver of this requirement by submitting a written application for waiver to the department [no fewer than] at least two weeks prior to the planned burn project; the burner shall document the reasons for requesting the waiver in the application for a waiver; the department shall notify the burner no later than one week prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial; the department shall consider each waiver request on a case-by-case basis; and

(ii) conduct burn projects at least 300 feet from any occupied dwelling, workplace, or place where people congregate, which is on property other than the burn project location; the burner may apply for a waiver of this requirement by submitting a written application for waiver to the department [no fewer than] at least two weeks prior to the planned burn project; the burner shall document the reasons for requesting the waiver in the application for a waiver; the department shall notify the burner no later than one week prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial; and the department shall consider each waiver request on a case-by-case basis; or

(b) The burner shall:

(i) only burn during times when the ventilation index category is rated "good" or better, as determined by using the methodology outlined in 20.11.21.17 NMAC, unless a waiver has been granted by the department; the burner may apply for a waiver of this requirement by submitting a written application for waiver to the department no later than 10:00 a.m. one business day prior to the planned burn project; the burner shall document the reasons for requesting the waiver in the application for a waiver; the department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial; the department shall consider each waiver request on a case-by-case basis; and

(ii) conduct visual monitoring and document the results in writing; the results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, and the duration of the smoke plume(s), and corresponding time-of-day information; use of onsite instruments to record the wind speed and direction is encouraged; no later than six months after the burn project, the burner shall submit records of these results to the department; for burn projects planned to be conducted within a one mile radius of a population, the department may require the burner

to notify the department no later than two business days prior to the planned burn project so that the department may determine whether to conduct instrument monitoring, in addition to the visual monitoring conducted by the burner; and the need for instrument monitoring by the department shall be determined by the department on a case-by-case basis.

(2) The burner shall notify the local fire authorities prior to igniting a burn.

(3) ~~[No later than 10:00 a.m. one business day prior to the planned ignition of the burn project.]~~ The burner shall register the burn project with the department (on a registration form obtained from the department), no later than 10:00 a.m. one business day prior to the planned ignition of the burn project. The department shall provide the burner with a registration number for the burn project. Prior to igniting the burn project, if the burner has not received the registration number, the burner shall make a good faith effort to contact the department to obtain the registration number. If the burner is not able to obtain a registration number before igniting the burn, the burner shall obtain a registration number from the department as soon as possible. For burn projects longer than seven consecutive days, the burner shall notify the department every seven days when burning is to be conducted under that burn project registration. The burner shall not burn more area or volume than the burner has included in the registration form submitted to the department.

(4) ~~[No more than two weeks following completion of the burn project.]~~ The burner shall submit a completed burn project tracking form to the department (on a tracking form obtained from department), no later than two weeks following completion of the burn project.

(5) For burn projects conducted within a one-mile radius of a population, the burner shall comply with the following additional requirements ~~[in addition to complying with all other applicable requirements of Subsection B of 20.11.21.15 NMAC]:~~

(a) the burner shall conduct visual monitoring and document the results; the results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, the duration of the smoke plume(s), and corresponding time-of-day information; use of onsite instruments to record the wind speed and direction is encouraged; documentation through use of photographs, with the date, time, and other relevant information noted on the photographs, is also encouraged; and no later than six months after the burn project, the burner shall submit records of these

results to the department; and

(b) ~~[no fewer than two days prior to, and no earlier than 30 days in advance of igniting a burn project.]~~ The burner shall conduct public notification of any population(s) within a one-mile radius of the burn project ~~[in advance of igniting the burn project]~~ at least two days prior to, but no earlier than 30 days in advance of igniting a burn project; and the method of notification shall be an advertisement in a newspaper of general circulation in the area where the burn will take place, ~~[and/or]~~ or other means, as approved by the department to ~~[assure]~~ ensure that adequate notice is provided to the affected public.

(6) An applicant for a waiver may challenge the department's denial of a waiver by following the procedures established in 20.11.21.21 NMAC. A person adversely affected by the department's ~~[grant]~~ granting of a waiver may challenge the department's decision by following the procedures established in Subsection B of 20.11.21.21 NMAC.

C. Requirements for PB-II: For any burn project expected to produce emissions greater than or equal to one ton of PM₁₀ emissions per day or expected to burn 5,000 cubic feet pile volume per day or more, all of the following requirements shall ~~[be met]~~ apply.

(1) The burner shall review smoke management educational material supplied by the department or complete a department-approved smoke management training program prior to initiating burning.

(2) The burner shall consider alternatives to burning and shall document the alternatives considered and the rationale for not utilizing alternatives provided in 20.11.21.18 NMAC on a form obtained from department.

(3) The burner shall implement at least one emission reduction technique included in 20.11.21.19 NMAC and shall document the techniques implemented on a form obtained from the department. ~~[No fewer than two weeks prior to the planned burn project.]~~ The burner may apply for a waiver of this requirement by submitting a written application to the department at least two weeks prior to the planned burn project. The burner shall document the reasons for requesting the waiver in the application for a waiver. The department shall notify the burner no later than 10:00 a.m. one week prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial. The department shall consider each waiver request on a case-by-case basis.

(4) The burner shall only burn during times when the ventilation index category is "good" or better, as determined by using the methodology outlined in 20.11.21.17 NMAC, unless a waiver has

been granted by the department. ~~[No later than 10:00 a.m. one business day prior to the planned burn.]~~ The burner may apply for a waiver of this requirement by submitting a written application to the department no later than 10:00 a.m. one business day prior to the planned burn. The burner shall document the reasons for requesting the waiver in the application for a waiver. The department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn whether the waiver is granted or denied, and, if denied, the reasons for the denial. The department shall consider each waiver request on a case-by-case basis.

(5) The burner shall conduct visual monitoring and shall document the results. The results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, and the duration of the smoke plume(s). Use of onsite instruments to record the wind speed and direction is encouraged. Documentation through use of photographs, with the date, time, and other relevant information noted on the photographs, is also encouraged. No later than six months after the burn project, the burner shall submit records of these results to the department.

(6) The burner shall notify the local fire authorities prior to igniting a burn.

(7) ~~[No fewer than two weeks prior to planned ignition of the burn.]~~ The burner shall register a burn project with the department on a registration form obtained from the department at least two weeks prior to planned ignition of the burn. The department shall provide the burner with a registration number for the burn project. Prior to igniting the burn project, if the burner has not received the registration number, the burner shall make a good faith effort to contact the department to obtain the registration number. If the burner is not able to obtain a registration number before igniting the burn, the burner shall obtain a registration number from the department as soon as possible. For burn projects longer than seven consecutive days, the burner shall notify the department every seven days when burning is to be conducted under that burn project registration. The burner shall not burn more area or volume than the burner has included in the registration form submitted to the department.

(8) The burner shall notify the department of the intent to burn on a specific date no later than 10:00 a.m. one business day prior to the planned burn project. The notification may be made up to a seven days prior to igniting the burn. The department shall notify the burner of the receipt of the notification by 11:00 a.m. on the day the department receives the notification. If the department has not notified the burner by

11:00 a.m., and prior to igniting the burn, the burner shall make a good faith effort to contact the department to verify that the department received the notification. The burner shall not burn more area or volume than the burner included in the registration. The department shall notify the burner no later than 3:00 p.m. one business day prior to the start of the burn project if a modification of the burn is being required by the department.

(9) ~~[No later than two weeks following the end of the burn project,]~~ The burner shall complete and submit to the department a fire activity tracking form, using a form obtained from the department no later than two weeks following the end of the burn project.

(10) The department may require the burner to notify the department no later than two business days prior to the planned burn so the department may determine whether to conduct instrument monitoring in addition to visual monitoring conducted by the burner. The need for instrument monitoring by the department shall be determined by the department on a case-by-case basis.

(11) The burner shall conduct public notification ~~[no fewer than]~~ at least two business days prior to, and no earlier than 30 days prior to igniting a burn. The method of notification shall be an advertisement in a newspaper of general circulation in the area where the burn will take place, ~~[and/or]~~ or other means, as approved by the department to ~~[assure]~~ ensure that adequate notice is provided to the affected public.

(12) An applicant for a waiver may challenge the department’s denial of a waiver by following the procedures established in 20.11.21.21 NMAC. A person adversely affected by the department’s ~~[grant]~~ granting of a waiver may challenge the department’s decision by following the procedures established in Subsection B of 20.11.21.21 NMAC.

D. Wildland fire use: For wildland fire use exceeding 10 acres in size, the following requirements shall apply:

(1) ~~[No later than one business day following the decision to manage a wildland fire use burn,]~~ The burner shall register the burn project with the department on forms obtained from the department no later than one business day following the decision to manage a wildland fire use burn. The department shall provide the burner with a registration number for the burn project. Each day the wildland fire use burn project is burning, the burner shall notify the department daily by 10:00 a.m. on the status of the burn project.

(2) The burner shall notify the ~~[appropriate]~~ local fire authorities of the decision to manage a wildland fire use burn. For wildland fire use burns within Bernalillo county, the burner shall conduct public notification no later than one calendar day after the decision to manage the burn as a wildland fire use burn. The notification shall be appropriate to the population being notified.

(3) The burner shall conduct visual monitoring and shall document the results. The results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, and the duration of the smoke plume(s). Use of onsite instruments to record the wind speed and direction is encouraged. Documentation through use of photographs, with the date, time, and other relevant information noted on the photographs, is also encouraged. No later than six months after the burn project, the burner shall submit records of these results to the department.

(4) ~~[No later than two weeks following the end of the burn project,]~~ The burner shall complete and submit to the department a fire activity tracking form obtained from the department no later than two weeks following the end of the burn project.

E. **Wildfire under suppression:** For all wildfires exceeding 100 acres in size, the land manager or owner of property on which the wildfire occurs shall complete a fire activity tracking form obtained from the department and submit it to the department no later than six weeks following the cessation of fire fighting activities on the wildfire.

[20.11.21.15 NMAC - N, 12/31/03; A, 7/11/11]

20.11.21.17 DETERMINATION OF VENTILATION INDEX CATEGORY:

A. PB-I and PB-II prescribed burns are allowed to be ignited only with a ventilation index category rated “good” or better, unless a waiver has been granted by the department. The ventilation index category may be obtained by contacting the department, or the burner may make the determination by calculating and documenting the ventilation index category using the following methodology:

(1) using a computer with internet access, enter the national weather fire forecast website at ~~[http://www.srh.noaa.gov/abq/fw-3.htm]~~ http://www.srh.noaa.gov/abq/?n=forecasts-fireweather or successor universal resource locator (URL) internet address; ~~[and]~~

(2) select the appropriate zone for the location of the burn project within the New Mexico map showing the various zones; ~~[and]~~

(3) examine the forecast and find the reference elevation to be used to determine the general ventilation index category for the Bernalillo county zone (e.g., Albuquerque - 5,300 feet above mean sea level or Mountainair - 6,500 feet above mean sea level); ~~[and]~~

(4) record the mixing height for “today” or “tomorrow” as appropriate; ~~[and]~~

(5) calculate the mixing height at the burn location by adding the forecasted mixing height and the reference elevation obtained above. From the sum of these two items, subtract the elevation of the burn location; and

(6) calculate the ventilation index for the prescribed burn by multiplying the mixing height at the burn location by the average forecasted transport wind speed.

B. Once the ventilation index for the prescribed burn has been calculated, refer to the following table to see if the ventilation index for the burn project is acceptable to ignite the burn:

Category	Knot-Feet
Excellent - Acceptable	Greater than or equal to 150,000
Very Good - Acceptable	100,000 - 149,999
Good - Acceptable	60,000 - 99,999
Fair - Not Acceptable	40,000 - 59,999
Poor - Not Acceptable	Less than or equal to 40,000

[20.11.21.17 NMAC - N, 12/31/03; A, 7/11/11]

20.11.21.18 ALTERNATIVES TO BURNING: As required by Subsection C of 20.11.21.15 NMAC, burners engaged in PB-II prescribed burns are required to consider the use of alternatives to burning, which include department-approved alternatives, as well as those listed in ~~[this section]~~ 20.11.21.18 NMAC. An effort will be made by the department to remove administrative barriers to the utilization of alternatives to burning.

A. **Manual/handwork** - Handwork involves picking up and moving limbs and brush, as well as cutting downed and standing

materials using hand tools or chainsaws. Manual work involves lifting, cutting, and carrying forest materials, and is generally limited to materials of roughly nine inches or less in diameter. Larger materials can be handled, but efficiency, production rate and safety decrease rapidly as size increases. If the fuels requiring treatment exceed the nine-inch-diameter threshold, handwork is not a good option.

(1) **Cut and scatter** - Hand crews cut and scatter material to change the vertical and horizontal continuity of the fuel load. This technique increases the surface fuel load by redistributing ladder fuels onto the ground surface. It is appropriate where stand density is generally low and existing surface fuels are shallow.

(2) **Pile** - Cut material is piled, redistributing the fuel load rather than reducing it. Piling can be used in denser stand conditions than [can] scattering can, because the piles can be situated to avoid fuel-loading problems. Drawbacks to piling include: slower decomposition than when scattered, labor intensive and dense stand conditions can result in a high number of piles.

B. Mechanical treatments

- Employ equipment as the primary means of modifying or removing fuels. Generally, treatment areas must be within one-quarter mile of a road and have slopes less than [forty] 40 percent.

(1) **Pile** - Cut material is piled, redistributing the fuel load rather than reducing it.

(2) **Fuel modification** - Machinery is used to process the material into smaller pieces that can then be redistributed on the ground surface or removed from the site. Because materials processed in this fashion can be much more densely packed than materials that are scattered by hand or piled by hand, the available oxygen supply is reduced, thereby inhibiting spread of fire and flame height.

(i) Masticate/mow

- Mastication involves the processing of standing or downed material where it occurs. Mastication is more suitable for denser stand conditions than is scattering or piling, and the redistributed fuel load decomposes more rapidly. It is most appropriate for treating both green and dead ladder fuels and the higher surface fuels. Mowing is primarily appropriate to treat grassland and light shrub land habitats. Like mastication, mowing processes the vegetation material on site and in place.

(ii) Chip/grind/cut

- Material is placed into a piece of equipment and discharged, often through a chute. Because of this feature, material can be processed more selectively and transported off site for either disposal or utilization. It is the method of choice when biomass

utilization is an option.

(iii) **Crush** - Another form of mastication; this technique is useful primarily for shrub land habitats dominated by brittle species.

(3) **Tree removal** - Numerous approaches to tree removal have been developed as the timber industry has evolved to operate in a variety of habitats and under myriad political and economic constraints.

(i) **Bole removal** - This is traditional harvesting. Trees are felled either by hand or mechanically and removed from the site for processing. Bole removal eliminates the vertical continuity of the fuel load, but increases surface fuels with the addition of leaf/needle and limb materials. Overall biomass is reduced.

(ii) **Whole tree yarding** - Trees are felled either by hand or mechanically. The entire tree is then brought intact to a staging area where they are processed. This method removes the vertical continuity of the fuel load, removes biomass, and adds very little to the surface fuel load. Moreover, the removal of leaf/needle and limb material is more important than bole removal in the context of fire behavior. Only suitable for trees 9-18 inches in diameter in order to avoid damage to soil and water quality caused by felling trees greater than 18 inches in diameter.

(iii) **Cut-to-length logging** - Utilizes specialized equipment to cut and process entire trees on site in the forest. While much of the biomass either remains onsite or must be addressed through secondary treatments, an important advantage of this technique is its efficacy in treating material of very small diameter.

C. **Chemical** - Chemical treatments entail the application of herbicides. Chemical treatments do not remove fuel, but kill existing vegetation or inhibit growth (i.e. maintenance of defensible fuel profile zones).

D. **Grazing** - Involves the use of livestock, primarily cattle and goats, to manage the growth and composition of brush and grasses. While it is of limited utility in forested habitats, it can be an effective technique in rural residential areas, in the wild land-urban interface and in selected grassland and shrub land habitats. [20.11.21.18 NMAC - N, 12/31/03; A, 7/11/11]

20.11.21.19 EMISSIONS REDUCTION TECHNIQUES:

Emissions reductions techniques (ERTs) are control strategies that help reduce smoke from prescribed fires. ERTs are used in conjunction with fire and do not replace fire. In addition to department-approved ERTs, other ERTs are included below.

A. **Reducing the area burned.**

(1) **Burn concentrations** - Sometimes concentrations of fuels can be burned rather than using fire on 100 percent of an area requiring treatment. The fuel loading of the areas burned using this technique tends to be high.

(2) **Isolate fuels** - Large logs, snags, deep pockets of duff, sawdust piles, squirrel middens or other fuel concentrations that have the potential to smolder for long periods of time can be isolated from burning. Eliminating these fuels from burning is often faster, safer and less costly than mop-up, and allows targeted fuels to remain following the prescribed burn. This can be accomplished by several techniques including:

(a) constructing a fireline around fuels of concern;

(b) not lighting individual or concentrated fuels;

(c) using natural barriers or snow;

(d) scattering the fuels; and

(e) spraying with foam or other fire retardant material.

(3) **Mosaic burning** - Landscapes often contain a variety of fuel types that are noncontinuous and vary in fuel moisture content. Prescribed fire prescriptions and lighting patterns can be assigned to use this fuel and fuel moisture non-homogeneity to mimic natural wildfire and create patches of burned and non-burned areas or burn only selected fuels. Areas or fuels that do not burn do not contribute to emissions.

B. Mechanical treatments

- Mechanically removing fuels from a site reduces emissions proportionally to the amount of fuel removed. Treatments may include but are not limited to the following methods.

(1) **Firewood sales** - Firewood sales may result in sufficient removal of woody debris making on site burning unnecessary. This technique is particularly effective for piled material where the public has easy access.

(2) **Whole tree harvesting** - Whole trees can be removed through harvesting or thinning techniques and virtually eliminate the need for burning.

(3) **Mulch/chips** - Mechanical processing of dead and live vegetation into wood chips or shredded biomass is effective in reducing emissions if the material is removed from the site or biologically decomposed.

(4) **Fuel for power generation** - Vegetative biomass can be removed and used to provide electricity in regions with cogeneration facilities.

(5) **Biomass utilization** - Vegetative material can be used for many miscellaneous purposes including pulp for paper, methanol/ethanol production, wood pellets, garden bedding, furniture, specialty crafts, compost, mulch and fiberboard/particleboard[,-etc].

C. Chemical pre-treatments - Broad spectrum and selective herbicides can be used to reduce or remove live vegetation, or alter species diversity respectively. Herbicides can be applied before burning to kill vegetation, which can create a much drier fuel, which in turn burns more efficiently.

D. Site conversion - Natural site productively can be decreased by changing the vegetation composition.

E. Land use change - Changing wildlands / shrublands / rangelands / croplands to another land use category may result in elimination of the need to burn and vice versa.

F. Reduce fuel loading - Some or all of the fuel can be permanently removed from the site, biologically decomposed, [and/or] or prevented from being produced. Overall, emissions can be reduced when fuel is permanently excluded from burning.

(1) **Mechanically removing fuel** - Mechanically removing fuels from a site reduces emissions proportionally to the amount of fuel removed.

(2) **Burn more frequently at low intensity** - This method prevents the fuels from building up and causing greater emissions.

(3) **Schedule burning before green up** - Burning in cover types with a grass [and/or] or herbaceous fuel bed component can produce fewer emissions if burning takes place before these fuels green-up for the year.

(4) **Under burn before fall leaf drop** - When deciduous trees and shrubs drop their leaves, this ground litter contributes extra volume to the fuel bed.

(5) **Ungulates** - Grazing and browsing live grassy or brushy fuels by sheep, cattle or goats can reduce fuels prior to burning or reduce the burn frequency.

(6) **Isolating pockets of fuel** - See explanation under reducing the area burned.

G. Reduce fuel consumption - Emission reductions can be achieved when significant amounts of fuel are at or above the moisture of extinction, and therefore are unavailable for combustion.

(1) **Having high moisture content in non-target fuels** - This can result in only the fuels targeted being dry enough to burn.

(2) **High moisture in large woody fuels** - Burning when large-diameter woody fuels (three- plus inch diameter or greater) are wet can result in lower fuel consumption and less smoldering.

(3) **Moist litter or duff** - The organic layer that forms from decayed and partially decayed material on the forest floor often burns during the inefficient smoldering phase. Consequently, reducing the consumption of this material can be effective at reducing emissions.

(4) **Mass ignition/shortened fire duration/aerial ignition** - "Mass" ignition can occur through a combination of dry fine-fuels and rapid ignition, which can be achieved using a helitorch. The conditions necessary to create a true mass ignition situation include rapid ignition of a large open area with continuous dry fuels.

(5) **Burn before large fuels cure** - Living trees contain very high internal fuel moistures, which take a number of months to dry after harvest. If an area can be burned within 3-4 drying months of timber harvest, many of the large fuels will still contain a significant amount of live fuel moisture.

(6) **Rapid mop-up** - Rapidly extinguishing a fire can reduce fuel consumption and smoldering emissions somewhat, although this technique is not particularly effective at reducing total emissions and can be expensive.

(7) **Burn before precipitation** - Scheduling a prescribed fire before a precipitation event will often limit the consumption of large woody material, snags, stumps, and organic ground matter, thus reducing the potential for a long smoldering period and reducing the average emission factor.

H. Minimizing emissions by minimizing the emission factor - Using burning techniques that create a more efficient burn.

(1) **Burning fuels in piles or windrows** - Keeping piles dry and free of dirt and other debris generates greater heat and therefore, the piles burn more efficiently. The piles or windrows can be made mechanically or by hand.

(2) **Utilizing a backing fire** - Flaming combustion is cleaner than smoldering combustion. A backing fire takes advantage of this relationship by causing more fuel consumption to take place in the flaming phase than would occur if a heading fire were used.

(3) **Rapid mop-up** - See above.

(4) **Mass ignition/shortened fire duration/aerial ignition** - See above.

(5) **Dry conditions** - Burning under dry conditions increases combustion efficiency and fewer emissions may be produced.

I. Air curtain incinerator (ACI) - Use of an air curtain incinerator improves combustion and reduces emissions by introducing high velocity air into a combustion environment. As the air continuously rotates in and over the environment, a "curtain" is created over the fire thus trapping smoke and particulate matter. Constant airflow into and over the combustion environment allows temperatures to remain high, resulting in relatively complete combustion of all emission products. ACIs can burn a wider variety of materials from green fuel to red

slash and produce lower smoke emissions as compared to pile or broadcast burning. They also reduce risk of an escaped fire since the fire is contained and can be quickly extinguished if necessary.

[20.11.21.19 NMAC - N, 12/31/03; A, 7/11/11]

20.11.21.20 AMBIENT AIR QUALITY STANDARD EXCEEDENCE:

The director shall have the authority to suspend any open burning allowed under [this Part] 20.11.21 NMAC in the event of ongoing or projected violations of the federal, state, or local ambient air quality standards.

[20.11.21.20 NMAC - Rn, 20.11.21.15 NMAC & A, 12/31/03; A, 7/11/11]

20.11.21.21 REVIEW MEETING, HEARING ON THE MERITS REGARDING PERMIT APPLICATIONS AND PERMITS:

A. If a permit applicant is adversely affected by or disagrees with the division's proposed decision regarding the applicant's permit application, the applicant may request an informal review meeting to discuss the division's proposed decision. The request shall be in writing or on a form obtained from the division. Within 15 working days of the applicant receiving the proposed decision, the applicant shall deliver the request to the director and the division manager. Unless a timely request for an informal review meeting is received by the director, the division's proposed decision regarding the permit application shall be final. Within 10 working days after receiving the request, the director shall hold an informal review meeting with the applicant and a division representative (e.g., division manager or the person issuing the proposed decision regarding the permit application) in an attempt to resolve disagreements. Within two working days after the informal review meeting, the division representative shall issue a final decision regarding the permit application. If the permit applicant or permittee is adversely affected by the final decision made by the division representative, the permit applicant or permittee may follow the procedures described in [the following subsection] Subsection B of 20.11.21.21 NMAC.

B. A person adversely affected by the decision of the division regarding a permit application or permit ("petitioner") may file a petition for a hearing on the merits before the board as provided by 20.11.81 NMAC, *Adjudicatory Procedures - AQCB*. Unless a timely petition for a hearing on the merits is received by the director, the decision of the division regarding the permit application or permit shall be final. [The petition shall be in writing, addressed to the board and be delivered to the director no

later than 30 consecutive days after the later of:

~~(1) the decision of the division regarding the proposed application, if no timely request has been made for an informal review meeting; OR~~

~~(2) the final decision of the division representative following an informal review meeting.~~

~~C. If a timely petition for a hearing on the merits is received by the director, the board shall hold a hearing on the merits within 60 consecutive days after the director receives the petition. No fewer than 21 consecutive days before the start of the hearing, the board shall notify the petitioner and the applicant or permittee, if other than the petitioner, of the date, time, and place of the hearing by certified mail. If the subject of the petition is a permitting action deemed by the board to substantially affect the public interest, the board shall cause the notice of the date, time, and place of the hearing to be published. In such circumstances, the public shall also be given reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.~~

~~D. The board may designate a hearing officer to take evidence in the hearing and recommend a decision to the board. All hearings shall be recorded.~~

~~E. The burden of proof shall be upon the petitioner. Based upon the evidence presented at the hearing, within 30 consecutive days of the close of the hearing, the board shall sustain, modify, or reverse the decision of the division regarding the permit application or permit. The decision of the board shall be final and may be appealed consistent with 74-2-9 NMSA.]~~

[20.11.21.21 NMAC - N, 12/31/03; A, 7/11/11]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.50 NMAC, sections 6, 8, 9, 10, 11, 12, 13, and 15, effective June 30, 2011

5.5.50.6 OBJECTIVE: The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. The JTIP program, also known as the Industrial Training Development Program or "in plant training," strengthens New Mexico's economy by providing financial incentives to companies that create new economic-based jobs in New Mexico. Training funded by JTIP also elevates the skill level of the New Mexico residents who fill funded positions. Since the program's inception in 1972, more than 1,000 companies and [close to] over 50,000 New Mexico workers have benefited from the program. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves. Eligibility requirements, which are highlighted below, are explained in more detail in the body of this manual. Reference can also be made to the enabling legislation (Section 21-19-7, NMSA 1978 and subsequent amendments).

A. Company eligibility: Three categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. Renewable power generators, film digital production, and post-production companies are eligible under the manufacturing category. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico; unless the company is considered a green industry. To be considered for JTIP, non-retail service companies must export a service rather than import a customer. The third category - film production companies - are regulated elsewhere. The company must be creating new jobs as a result of expansion, startup, or relocation to the state of New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP. For a more complete explanation of expansion requirements, refer to "company qualifications and requirements" in 5.5.50.8 NMAC. Financial strength is also a consideration in funding decisions. The company should be financially stable to ensure long-term employment for JTIP

participants.

B. Job eligibility: Jobs eligible for funding through JTIP must be newly created jobs, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to 10% of the total number of jobs applied for in the proposal. Jobs must also meet a wage requirement to be eligible for funding. For contract-based call centers, the position must meet or exceed at least 90% of the county median wage to qualify in urban locations and \$10.00 per hour in rural locations. The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit. An additional incentive may be offered for these jobs. In urban areas, companies which apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least 50% of the premium for employees who elect coverage.

C. Trainee eligibility: To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be domiciled in New Mexico (domicile is your permanent home; it is a place to which a person returns after a temporary absence) during employment, and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a GED.

D. Reimbursable training costs: Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide "quick response" training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A portion of trainee wages up to 75% for up to six months of initial training.

(b) A portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(c) A portion of approved travel expenses up to 75% with a cap of 5% of total funding for wages may be available.

(2) Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit may be eligible for an additional 5% wage reimbursement above the standard rates.

(3) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed 100%.

E. Program management and administration: General management of the Job Training Incentive Program is the responsibility of the job training incentive program board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program's management and operation. The board shall provide review and oversight to assure that funds expended will generate business activity and give measurable growth to the economic base of New Mexico throughout the year. The board has the authority to make funding decisions based on the availability of funds, sufficient appropriations, and the board's determination of the qualifications of the business. The board has adopted this policy manual to ensure the program supports the development of New Mexico's economy as intended by the governing legislation. Policies and procedures for the New Mexico enhanced skilled training program, STEP UP, are outlined in a separate document. The JTIP board meets the second Friday of every month to consider proposals for funding. The third Friday of the month serves as an alternate date when required. Administration of the Job Training Incentive Program is the responsibility of the JTIP staff in the New Mexico economic development department. One copy of a proposal for funding is due to the JTIP staff one month before the board meeting at which the proposal will be considered. Once staff has reviewed the proposal for accuracy and completeness, ten copies will be requested for distribution to the board approximately two weeks prior to the meeting.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011]

5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

A. Company qualifications and requirements: The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds: companies which manufacture a product in New Mexico and certain non-retail service providers. The first category is companies which manufacture a product

in New Mexico. Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production, in which raw materials are transformed into finished goods on a large scale, is one example. Assembly and installation on the customer premises is excluded, unless the company and jobs exist for the sole purpose of producing or installing environmentally sustainable products (see green industries definition). Manufacturing businesses are typically included in Sectors 31-33 of the North American industry classification system (NAICS). Renewable power generators, film digital production companies such as animation and video game production, and film post production companies are eligible under the manufacturing category. A company whose employees are compensated solely on piecework is also not eligible. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. Non-retail service businesses are only eligible when they export a product or service rather than import a customer. Companies that derive their revenues from within New Mexico or via face-to-face customer interaction at the company site or customer site are only eligible if they exist for the sole purpose of producing, installing or integrating environmentally sustainable products. Service companies which contract with government agencies outside the state may be considered provided they can demonstrate that they are bringing new revenues and new jobs into the state through contracts which support national or multi-state entities. Major United States research labs or companies which operate major United States research and development national laboratories are not eligible. JTIP will not consider contractors which rely on income that is already in the state of New Mexico eg., through national laboratories already existing in New Mexico. One category of non-retail service providers is customer support centers. To be eligible for JTIP funding, the customer support center must service a customer who is not physically present at the facility, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions which require outbound sales, solicitation, collections or telemarketing are not eligible for JTIP funds. Contract-based call centers have special wage requirements. Contract-based call centers are outsourcing vendors which provide information to customers of their clients on behalf of those clients. Contract-based call centers do not have a core expertise; rather they

communicate information provided to them by their clients. For contract-based call centers, the positions must meet or exceed at least 90% of the county median to qualify in urban locations and pay at least \$10.00 per hour in rural areas. Another category of non-retail business service providers is shared services centers that solely serve regional or national divisions. Distribution is another category of non-retail business service providers. A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer, or customer. Distributors qualify for JTIP as service providers if at least 50% of the customer base is located outside of New Mexico. Businesses which are not eligible include but are not limited to retail, construction, mining, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). The board uses the north American industry classification system (NAICS) as a general guideline to establish industry classification.

(2) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. Start-up companies are also eligible, provided they are producing a saleable product and are beyond the initial research and development or prototype phase. An expanding company is defined as an existing business which requires additional employees or workforce due to a market or product expansion. For first-time applicants, eligibility as an expanding company is determined by peak employment over the two prior years. The company must meet or exceed the average employment level for the past two years in order to be considered an expanding company and eligible for JTIP. For companies which have been funded by the program [previously] within the past two years, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels.

(3) If a company hires twenty or more trainees in a municipality with a population of more than forty thousand according to the most recent decennial census or in a class A county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is

not a requirement for dependent coverage.

(4) Companies are required to submit three years of financial statements (profit and loss and balance sheets) as part of the application process. Year-to-date financials may also be requested. Start-up companies which do not have three years of financials must submit financials for the period for which they are available, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, or pro forma financial statements which would substantiate their business expansion. Start-up companies must be producing a saleable product and may not be in the initial research and development or prototype phase.

(5) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

(6) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within 1 year of the completion of training, the JTIP board will require the refund of the funds associated with any JTIP trainee(s) which were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP lay-offs exceeds \$100,000 of reimbursement. The board will require a refund of funds within 90 days of notification.

(7) Layoff is defined as a separation of an employee from an establishment that is initiated by the employer as a result of market forces or other factors not related to employee performance.

(8) If a JTIP eligible trainee is laid-off during the training period and is subsequently rehired, within four months by the same employer, the trainee can be treated as a new hire and thus remains eligible for [JTIP] the remaining training hours.

B. Position qualifications and requirements: The following qualifications have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

(2) Trainer wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which qualifies for the high wage job tax credit. These levels are \$40,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$28,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Farmington, Las Cruces, Rio Rancho, Roswell, and Santa Fe. Los Alamos is also treated as an urban community.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. Positions eligible under JTIP must directly support the primary mission of the business. In addition, other newly created positions may be funded up to a maximum of 10% of the total number of jobs for which funding is requested.

C. Trainee qualifications and requirements: The company has the exclusive decision in the selection of trainees. Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within six months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is requested meet legislative requirements.

(1) Trainees must be new hires. No retraining of current company employees is allowed under the JTIP program. Individuals who have worked as contractors to the company are not eligible to be hired under JTIP in the same or similar position as the one contracted. Individuals who have been employed temporarily in a position classified as intern in order to gain practical training that connects an academic pathway into work based or relevant business experience may be eligible. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public school program except by graduation or GED certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP or Industrial Development Training Program are not eligible to participate again with the same company.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate in JTIP.

(7) Trainee job classifications should remain fixed during the program.

However, promotions may be allowed during the training period to another position in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to be reimbursed for the employee's training.

(8) Trainees' start dates must occur after the actual contract date.

(9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.

(a) The trainee must be hired by the company as a permanent full-time employee before the end of the JTIP approved training hours.

(b) The trainee must receive the same wages and major medical [~~dental, and vision~~] benefits while working as a temporary employee that permanent employees of the company receive.

(c) The staffing agency must disclose wages paid to the temporary employee to the company.

(d) The amount of reimbursement during the temporary period will be the actual wage paid to the employee and will not include extra fees paid to the staffing agency.

(10) Companies are reimbursed for wages as each trainee completes the approved training hours.

(11) If a trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011]

5.5.50.9 ELIGIBLE TRAINING PROGRAMS:

A. The authorizing legislation establishes the following criteria for training.

(1) Training projects shall, to the extent possible, be customized to meet the company's specific needs.

(2) Training projects shall provide quick-response classroom and on the job training.

(3) Training shall provide New Mexico residents with improved economic status through employment.

(4) Training shall provide measurable growth to the economic base of New Mexico.

B. The types of training projects eligible under the Job Training Incentive Program are:

(1) structured on-the-job training (OJT) and "hands on" skill development at

the company's facility;

- (2) custom classroom training provided by a New Mexico post-secondary public educational institution;
- (3) a combination of classroom and OJT as described above.

C. On-the-job training: Training is conducted at the participating company's facility and generally involves structured on-the-job training (OJT) or 'hands-on' skill development. Although certain modules may be conducted in a classroom setting at the company location, the training is still considered OJT. The training must be customized to develop essential skills particular to the company's needs.

(1) A comprehensive training plan is required as part of the proposal for funding. The training plan must include the company job description, O*NET job description, and training units. Each unit will include core content or objectives, methods and materials, methods of evaluation and requested hours. The training plan must cover the entire period for which reimbursement is requested. A more detailed description of the training plan requirements is included in the *JTIP proposal guide*.

(2) The participating company is responsible for providing the necessary facilities, equipment, materials and training staff. Trainer's wages are not eligible for funding through JTIP.

(3) The executed contract will comply with governing legislation. Please refer to the sample contract in the appendix.

D. Custom training provided by a New Mexico post-secondary public educational institution: Training is conducted by a New Mexico post-secondary public educational institution in a classroom setting either on campus or at the work site. This type of training is typically coordinated through the institution's workforce training center. At least three trainees must participate in classroom training, which should be customized to meet the specific needs of the company. Only JTIP participants are eligible to attend the training at JTIP's expense. If appropriate training opportunities are not available through public institutions, private institutions may be considered. The educational institution must provide a separate proposal to the JTIP board. The custom training outlined in this proposal must be integrated with the proposal submitted by the company for trainee wages.

(1) The contracted institution or the participating company will work with the economic development department to establish the contract, its content, scope, and training standards to ensure that the program meets or exceeds the company's requirements.

(2) The contracted custom training will be integrated into the training plans submitted by the company in the coordinating JTIP proposal.

(3) The contracted custom training will be conducted within the initial training period approved by the JTIP board.

(4) Payment for classroom training services shall be made only for a qualified and approved program. Reimbursement for classroom training will be at a maximum rate of \$35 per hour of training per trainee with a cap of \$1,000 per employee. Tuition reimbursement [is] and industry certification programs are not eligible for JTIP funding.

(5) Facilities rental outside a public educational institution and equipment rental or purchase are not eligible for JTIP funds unless facilities are not available at the company or the educational institution.

(6) The executed contract shall comply with the governing legislation.

[5.5.50.9 NMAC - N, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2011]

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses [are] may be eligible for reimbursement through JTIP

(1) A percentage of trainee wages [~~up to 80%~~] for up to six months of initial training.

(2) A percentage of travel expenses associated with training [~~up to 75%~~].

(3) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.

B. Standard reimbursement rates for wages and travel range up to 75%. Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit [are] may be also eligible for an additional 5% wage reimbursement. If a company is participating in other job reimbursement training programs such as the Workforce Investment Act (WIA), the combined reimbursement to the company may not exceed 100%.

C. The Job Training Incentive Program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

D. Wage reimbursement:

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of reimbursement ranges up to 75%, depending on the business location. An additional 5% may be awarded for jobs which also qualify for the high wage job tax credit.

(2) The number of hours eligible for reimbursement varies by position, up to 1040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at <http://onetcenter.org>. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. The number of recommended hours is included in the table below.

General Guideline for Duration of Reimbursable Training Time/Wages							
Job Zone	Definitions	SVP Range/ Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	160	9.00	8.00	20	4
1a	Little or no preparation needed	Below 4.0	320	10.00	8.50	40	8

2	Some preparation needed	4.0 to < 6.0	480	11.50	9.00	60	12
2a	Some preparation needed	4.0 to < 6.0	640	13.00	9.50	80	16
3	Medium preparation needed	6.0 to < 7.0	800	14.50	11.00	100	20
3a	Medium preparation needed	6.0 to < 7.0	960	16.00	12.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1040	19.00	13.00	130	26
	Align with HWJTC	Additional 5%	1040	19.25	13.50	130	26

(3) The JTIP staff will ensure that the O*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board may award training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the table above. If a company establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O*NET recommended hours. Generally, the hours are reduced to the hours allowed for the next lower job zone. The reimbursement percentages may be adjusted at the discretion of the board based on availability of funds or sufficient appropriations.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Businesses in urban locations (cities with population above 40,000 in the most recent decennial census) and Class A counties (i.e., Los Alamos) are reimbursed at up to 50% for all eligible training hours. Urban communities are: Albuquerque ([448,607] 545,852), Farmington (45,877), Las Cruces ([74,267] 97,618), Rio Rancho ([51,765] 87,521), Roswell ([45,293] 48,366), and Santa Fe ([62,203] 67,947).

(b) Companies located in rural areas, [~~which is defined as any area 10 miles outside the urban areas~~] outside those listed above are reimbursed at up to 65% for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to [~~70%~~] 75% for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to 75% reimbursement. To receive [~~a~~] up to 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(e) Companies located on Native American reservations are eligible for up to 75% reimbursement.

(6) JTIP eligible positions which meet the requirements of the high wage job tax credit [~~are~~] may be eligible for an additional 5% reimbursement. These requirements are a hiring salary of \$40,000 or higher in an urban or class A county and a hiring salary of \$28,000 or higher in a rural location or economically disadvantaged area. [~~Reimbursement for positions which meet these requirements is up to 55% in an urban location, up to 70% in a rural location, up to 75% in frontier, and up to 80% in an economically distressed area and on Native American land.~~] Trainee requirements (New Mexico residency for one year, new hire status, etc.) are still factors for JTIP eligibility.

(7) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed one thousand and forty (1,040) hours per trainee (six months) based on the company's scheduled workweek, not to exceed forty (40) hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as WIA, the combined reimbursement to the company may not exceed 100%.

E. Reimbursement for custom classroom training: Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of \$35 per hour per trainee with a cap of \$1,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, fringe benefits, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. *No training equipment may be purchased or rented using JTIP funds.*

F. Travel cost and per diem reimbursement for trainees and trainers: Trainee travel and per diem may be included in the proposal when trainees are required to travel to a different location for training. Travel expenses may also be included if a trainer is required to travel to New Mexico to conduct training. Reimbursement for travel and per diem will be consistent with the rates as designated by location [~~(up to 50% for urban, up to 65% for rural, up to 70% for frontier, and up to 75% for economically distressed and Native American areas)~~]. Travel and per diem must be pursuant to 2.42.2 NMAC of the department of finance and administration's regulations governing the Per Diem and Mileage Act. Total travel cost is not to exceed five (5%) of the amount requested for wages.

[5.5.50.10 NMAC - Rp, 5.5.50.10 & 11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2011]

5.5.50.11 REQUIREMENTS FOR FUNDING REQUEST:

A. A company must submit a written proposal to the JTIP staff one month before the board meeting to be considered for funding. Information and documentation which must be included in the proposal is explained in detail in the *JTIP proposal guide*, which describes the requirements for initial applications for funding and for companies which are submitting subsequent requests. The proposal is an important document not only in establishing the company's eligibility for JTIP funding, but also its viability as a business and the relationship of the newly created jobs to business expansion. A detailed training plan is required to ensure the success of the trainees, the training program, and ultimately the business.

B. The board considers a number of factors when evaluating proposals. These include:

(1) being a corporate or ~~[regional headquarter facility:]~~ established industry leader;

(2) quality of jobs with respect to wages and benefits; companies are encouraged to pay at levels which qualify for the high wage job tax credit (\$40,000 in urban locations and \$28,000 in other locations);

(3) return on investment, including impact on local and state economies; factors include number of jobs, impact on average wage and household earnings; increase in per capita income; annual local purchases impacting local/state sales taxes; dollar amount of new construction; environmental impact; and overall economic support to the community;

(4) the company's financial strength should indicate a capacity for long-term employment for JTIP participants;

(5) charitable and community contributions.

[5.5.50.11 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 06-30-2011]

5.5.50.12 PROCEDURAL OVERVIEW:

The procedure for completing a funding proposal is explained in detail in the *JTIP proposal guide*. The procedure for program participation once funding is approved is described in the *JTIP program guide*. This summary is intended to provide a general overview of the process. Please refer to the appropriate guide when completing a proposal for funding and administering the program once it is funded. JTIP staff is available for assistance with these processes.

A. Proposals and contract amendments must be submitted to the economic development department, JTIP, no less than four weeks before the JTIP board meeting at which the proposal will be considered for funding. Early submission

is required to allow JTIP staff and board members to review the materials and request clarification or additional information if needed. Ten copies of the proposal will be requested once the proposal has been reviewed by staff and refined, if necessary.

B. Board meetings are generally held on the second Friday of each month. The alternate date, which is used when a meeting on the second Friday is not viable (a quorum cannot be achieved, holiday, etc.) is the third Friday of the month.

C. The contract start date is the date of the board meeting at which funding was approved. The contract end date is one year after the start date. All claims for reimbursement must be submitted and the final audit must be completed within 30 days of the contract end date.

D. The contractual agreement will be prepared and mailed out to the company within 15 working days after the board approval date. A sample contract is included as an appendix to this manual. Companies are encouraged to review the contract before applying for funding, as the contract cannot be edited.

E. The company must return the signed contractual agreement to the economic development department within 15 business days from the issue date.

F. Eligible job openings must be registered with the New Mexico department of workforce solutions. The company is also encouraged to advertise through the placement office at local post-secondary educational institutions. A list of all post-secondary, public and proprietary institutions is available from the New Mexico higher education department (<http://hed.state.nm.us>).

G. The company must hire trainees within four months of the contract start date. The JTIP staff may extend the hiring period up to six months from the contract start date. This timing ensures that trainees who are eligible for six months of training will complete the program before the contract end date.

H. The company must provide the JTIP staff with a roster of new hires at the end of the four month hiring period. When the company submits the list, the allocation of funds for their contract will be adjusted to reflect the number of people hired. The board will not entertain extensions to the contract.

I. Claims for reimbursement should be submitted as ~~[each participant completes]~~ participants complete training.

J. Each project is subject to compliance reviews throughout the term of the contract. The compliance review includes program and fiscal surveys.

K. The company must arrange for a final audit by an independent

accounting firm registered with the New Mexico regulation and licensing department, board of accountancy. ~~[A list of approved auditors is available from JTIP staff or from (www.saonm.org). A specific amount for the audit is included as part of the proposal approval. Any amount in excess of this amount is the responsibility of the company. The audit must be completed before the end of the contract. Companies should keep this deadline in mind when selecting an auditor.]~~ The final audit requirement does not apply to contracts for custom training at New Mexico higher educational institutions. These institutions must meet all other program requirements and are subject to a compliance audit by JTIP staff.

L. ~~[All claims for reimbursement must be submitted and the final audit must be completed before the contract end date.]~~ The final claim for reimbursement should be submitted with the completed final audit report. The final wage claim will be paid once the final audit has been received and approved favorably.

M. Yearly follow-ups are conducted to show effectiveness of the program, including surveys to address retention rates of program participants.

N. Companies that fail to comply with all established operating requirements, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP.

[5.5.50.12 NMAC - N, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2010; A, 06-30-2011]

5.5.50.13 AMENDMENTS:

A. Amendments to the contract may be allowed in special circumstances. Amendments may be required by administrative changes (such as job classification changes, company name change, etc.) and changes to the number of participants funded. Companies must submit an amendment request, along with supporting documentation to justify the amendment to the job training incentive program board. All amendment requests must include 1) a letter describing the change requested and the reason for the change, 2) a completed amendment form, and in some cases a current financial statement. A copy of the amendment form is included in the *JTIP program guide*. Amendments to add new types of positions not already a part of the contract must be approved by the JTIP board before the participants are hired. Amendments which increase the number of participants in approved positions and increase the budget by more than \$10,000 must also be approved by the board prior to participants being hired. Amendment requests which are administrative in nature and do not increase the original budget amount by more than \$10,000 may be

executed by JTIP staff. Examples include job classification changes, company name change, and changes to wage ranges. Amendments to decrease the number of positions in the contract, including the release of funds for positions not filled within the [six-month] hiring period, may also be executed by JTIP staff without board approval. The program manager and division director or his/her designee will approve all staff executed contract changes. Otherwise, the JTIP board must approve all contract amendments. If a company requests an amendment increasing the original contract by more than 50% or \$100,000, whichever is the lesser amount of the two, a new proposal must be submitted. However, if the company submits a new proposal within six months of the original proposal which is for an amount greater than would normally be allowed for amendment, the company may submit a shorter modified proposal.

B. All project amendment requests must be submitted in writing one month prior to the board meeting. The board meetings are held on the second Friday of every month, with the third Friday occasionally used as an alternate. [5.5.50.13 NMAC - Rp, 5.5.50.11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2011]

5.5.50.15 GLOSSARY:

A. Agriculture/mining/extractive industries: Companies classified in agriculture, mining, and extractive by the North American industry classification system (NAICS) are not eligible for JTIP.

B. Company: A company is a corporation, or less commonly, an association partnership or union that carries on a commercial or industrial enterprise. Generally, a company may be a corporation, partnership, association, joint-stock company, or organized group of persons, whether incorporated or not, and (in an official capacity), legally recognized organizational entity designed to provide goods or services to consumers or corporate entities such as governments, charities, or other businesses.

C. Economically distressed areas: Companies located in an economically distressed area in New Mexico are eligible for 75% reimbursement. To receive a 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

D. Expanding company: An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the two prior years. (Refer to "peak employment.")

E. Film and multimedia post production: Film digital production and post-production companies are considered manufacturing provided the company operates year round and is primarily engaged in any of the following: animation, editing, Foley recording, automatic dialogue replacement, sound editing, special effects (including computer generated imagery or other effects), scoring, and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Production jobs must be full-time and qualifying trainees must be employed year round. Position must not require trainee to complete product on filming location. Trainee may not be directly employed by the client company at any time.

F. Frontier: A frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

G. Green industries: Those that exist for the sole purpose of contributing directly to preserving or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries may include: energy system retrofits to increase energy efficiency and conservation; production and distribution of biofuels and vehicle retrofits for biofuels; building design and construction that meet the equivalent of best available technology in energy and environmental design standards; organic and community food production; manufacture of products from non-toxic, environmentally certified or recycled materials; manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells; solar technology installation and maintenance; recycling, green composting and large-scale reuse of construction and demolition materials and debris; and water system retrofits to increase water efficiency and conservation.

H. High wage job tax credit: The high wage job tax credit provides a tax credit of 10% of the wages and benefits paid for each new economic-based job created on or after July 1, 2004 and before July 1, [2009] 2015, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$28,000/year in a community with a

population of less than 40,000 and \$40,000/year in a community with a population of 40,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

I. Manufacturing: Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the premises of the customer is not included as manufacturing. Manufacturing businesses are typically included in Sectors 31-33 of NAICS. Manufacturing is defined at Section 7-4-10B NMSA 1978 as "combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or (4) processing natural resources, including hydrocarbons."

J. NAICS: North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at www.census.gov/epcd/naics02/naicod02.htm.

K. Native American crafts: Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

L. New company: A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID and a New Mexico unemployment insurance ID when applying for JTIP funds.

M. Non-retail service sector business: To be considered for JTIP funding, the company must provide services which are not retail in nature and must export 50% of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies must export a service rather than import a customer.

N. O*NET: The occupational information network - O*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O*NET. The O*NET database is available at www.onetcenter.org.

O. Peak employment: First time JTIP applicants: Peak employment will be based on the employment average from two previous years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

P. Peak employment: Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unemployment insurance (UI) report for the last two years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

Q. Retail trade: Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise. Retailers operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers.

R. Renewable energy: is a source of power generated from resources which are naturally replenished, including but not limited to electricity or heat derived from solar, wind, tidal power, hydropower, biomass, geothermal resources and biofuels or hydrogen produced from renewable resources.

S. Southwestern arts and crafts: Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

T. Urban communities: An urban community is defined as a municipality with a population of forty thousand or more according to the most recent federal decennial census. Those

communities are: Albuquerque ([448,607] 545,852), Farmington (45,877), Las Cruces ([74,267] 97,618), Rio Rancho ([51,765] 87,521), Roswell ([45,293] 48,366), and Santa Fe ([62,203] 67,947). Class A counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

U. Metropolitan statistical area: An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA's are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus. In New Mexico there are four MSA's. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and Tarrant counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

V. Rural: Any area located 10 miles or more outside communities defined as urban in the JTIP policy. [5.5.50.15 NMAC - Rp, 5.5.50.13 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.51 NMAC, Sections 7 through 11, effective June 30, 2011.

5.5.51.7 DEFINITIONS: For use in this part, the following definitions apply.

A. "Above-the-line" is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and producers. This term means job positions that are associated with the creative or financial control of a film or multimedia project, generally not the technical aspects.

B. "Below-the-line" is a film and television industry term derived from where the money is budgeted for technical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job positions, this term means technical crew that does not have direct creative or financial control of the project nor receive residuals.

C. "Company" means

the contractor for FCAP and is either a temporary film or multimedia production company that was created to produce (one) film or multimedia product or a film or multimedia production company that is permanently based in New Mexico with full-time employees and creates film or television products.

D. "Craft" means the specialized area or department in which a film technician works.

E. "Crew" means the employees hired by a company to complete a film or multimedia project(s).

F. "Deal memo" means the film industry contract that defines the exact terms of a crew member's employment including but not limited to position title and pay rate.

G. "FCAP" means film crew advancement program.

H. "Film or television credit" for this program means work on a film or television production for more than one week which was not a student film, internship, unpaid position, documentary, commercial, nor on a project where the budget was under [~~one million dollars~~] five hundred thousand dollars (\$500,000.00) and the company did not participate in this program.

I. "Film technician" means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (IATSE) film union or guild.

J. "General safety certified" means a crew member has completed a class or course that meets OSHA standards for general safety associated with working on a film and multimedia project.

K. "JTIP" means job training incentive program.

L. "Non-union" means the job position is not in the contractual jurisdiction of a film union or film guild.

M. "Mentor" means the go-to person for questions and direction or the supervisor of a program participant and has a stronger skill set in relation to the job position in which that participant was hired.

N. "NM" means New Mexican.

O. "Open hours" means a trainee that qualified for FCAP during a production did not use all 1040 hours available. Hours that remain are considered "open" and may be used for that job position on another production upon qualification.

P. "On-the-job training" means gaining experience in a hired position increasing job opportunities for continual employment in the film and television industry.

Q. "Payroll report" means the report generated from a payroll company hired by the production company to act as

the crew's payment agent for the film and multimedia project.

R. "Principal photography" means the cameras have started filming and the majority of preparation for a film and multimedia project has been completed; call sheets are now issued to crew members and production reports are completed daily.

S. "Production" means the film or multimedia project preparation, principal photography and set break down periods while creating a film or television project.

T. "Resident" means an individual who is domiciled in New Mexico. This domicile is the individual's permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

U. "Salaries" means wages or the hourly pay rate for hours physically worked by trainee during a production.

V. "Trainee" means the crew member that shall be learning a new skill set or graduating to a higher job classification through the FCAP and is synonymous with the terms program participant or applicant.

W. "Wages" means the hourly pay rate for hours physically worked by trainee during production. It does not include film payments to trainees such as kit rental, holiday pay, travel time, mileage reimbursements, or any payment to employee due to penalties incurred by company during production of the project. [5.5.51.7 NMAC - Rp, 5.5.51.7 NMAC, 4-30-2009; A, 6-30-2010; A, 6-30-2011]

5.5.51.8 P R O G R A M OUTLINE:

A. The following is the program outline for all participating companies:

(1) Each trainee qualifies for a maximum of 1040 hours. As the trainee works on a film or television project, the hours shall be deducted accordingly.

(2) The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

(3) Trainee's pay rate shall be consistent with trainee's job position per this crew member's contract with company and trainee's pay rate shall be higher than the positions in the lower tier of positions under trainee, or per union contractual agreement

where applicable.

(4) Any requests for a different job position or mentor to qualify for the program shall be considered by the New Mexico film division, and if approved, noted in file.

(5) The number of film and television production credits and the amount of experience required for a participant to qualify shall be determined by the New Mexico film division based on the total budget of the project and the extent to which the participant is adding to their skill set.

B. The following is in addition to the program outline in Subsection "A" and shall apply to temporary companies participating in program:

(1) Trainees shall work at least 80 hours in their hired position in order to qualify.

(2) Trainees may qualify for an additional 1040 hours if the training received through this program is used to progress from their current job to a higher job classification or to move laterally into a new skill set and the individual meets program qualifications.

(3) Qualifying participants may apply any unused hours to future on-the-job training work opportunities in the specified job position until the 1040 hours are exhausted.

(4) Unused training hours in a lower level position are forfeited once a trainee moves to a higher level within that skill set and that department.

(5) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for individual projects produced by temporary companies.

(6) The number of trainees allowed to participate in each craft department shall be determined by the New Mexico film division based on the total budget of the project, department crew size and the company location.

C. The following are in addition to the program outline in Subsection "A" and shall apply to permanent companies participating in program:

(1) Trainees shall complete the 1040 hours to qualify.

(2) Qualifying job positions shall be technical and directly contribute to the creation of a product as determined by the New Mexico film division and shall not relate to distribution of end product(s).

(3) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for permanent companies creating products.

(4) Qualifying participants may only participate one time in the program as an employee of this company; however, where the trainee has completed all 1040 hours in the original hired position, requests to participate again will be considered upon

written documentation submitted by the employer and by the trainee that verifies the trainee will be advancing to a higher job classification.

[5.5.51.8 NMAC - Rp, 5.5.51.8 NMAC, 4-30-2009; A, 6-30-2010; A, 6-30-2011]

5.5.51.9 T R A I N E E ELIGIBILITY:

A. Training applicants shall be certified as a film and multimedia trainee by the New Mexico film division.

B. Trainee applicants shall be New Mexico residents.

C. Trainee applicants shall raise their film or television position to a higher classification or [~~be adding~~] add a completely new skill set.

D. Applicants shall not have a film or television credit as defined by this program in a higher position in that department to qualify for a maximum 1040 training hours for that position. However, exceptions may be considered by the New Mexico film division if the participant's credits are from a project's budget that did not exceed two million dollars (\$2,000,000.00) and the participant is applying to the program again on a qualifying production with a larger total budget and a higher degree of complexity.

E. Trainee shall not be a mentor simultaneously on a production on projects produced by temporary companies. [5.5.51.9 NMAC - Rp, 5.5.51.9 NMAC, 4-30-2009; A, 6-30-2010; A, 6-30-2011]

5.5.51.10 M E N T O R ELIGIBILITY AND QUALIFICATIONS:

A. Mentors shall be certified as a film and multimedia mentor by the New Mexico film division.

~~**B.** Mentors of trainees shall be New Mexico residents.~~

~~**C.**~~ **B.** Any requests for mentors who are not NM residents shall be [~~submitted in writing or via email to~~] considered by the New Mexico film division and if approved, noted in file.

~~**D.**~~ **C.** A mentor shall not be a trainee simultaneously during a production on projects produced by temporary companies.

~~**E.**~~ **D.** Mentor shall work in the same or directly related department with the trainees that they supervise for this program. [5.5.51.10 NMAC - Rp, 5.5.51.10 NMAC, 4-30-2009; A, 6-30-2010; A, 6-30-2011]

5.5.51.11 C O M P A N Y ELIGIBILITY AND ADMINISTRATIVE REQUIREMENTS:

A. Company shall submit the JTIP for film & multimedia application part one for FCAP.

B. Temporary companies shall meet one of the following requirements

in order to participate in the program:

~~(1)~~ total project budget shall be equal to or greater than two-hundred thousand dollars (\$200,000.00) but shall not exceed two million dollars (\$2,000,000.00); or

~~(2)~~ where the total project budget exceeds two million dollars (\$2,000,000.00), companies shall employ eight (8) New Mexican residents in first level or key job positions or higher level job positions in a minimum of six (6) different craft departments.

~~(B-)~~ C. Company shall enter into a contract as outlined by the New Mexico economic development department; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved.

~~(C-)~~ D. The approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

~~(D-)~~ E. Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.

~~(E-)~~ F. Company entering into a contractual agreement with economic development department shall return the program contractual agreement and program application to the New Mexico film division. This contract will be requested by the New Mexico film division prior to principal photography.

~~(F-)~~ G. Completed FCAP trainee applications must be submitted to the New Mexico film division by the company.

~~(G-)~~ H. Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.

~~(H-)~~ I. Company shall submit time records and reimbursement invoices as established by the economic development division to the New Mexico economic development department, which is the payment agent.

~~(I-)~~ J. The participating company shall submit forms and reports as established by the New Mexico film division of the New Mexico economic development department which may include:

(1) JTIP for film & multimedia application part one for FCAP; and

(2) department of finance and administration (DFA) tax information form; and

(3) JTIP for film & multimedia application part two for FCAP; and

(4) JTIP for film & multimedia

agreement for FCAP; and

~~(5)~~ industry top sheet of budget; and

~~(5-)~~ ~~(6)~~ FCAP participants' applications; and

~~(6-)~~ ~~(7)~~ production's final crew list or equivalent as determined by the New Mexico film division; and

~~(7-)~~ ~~(8)~~ a minimum of one call sheet or production report or equivalent as determined by the New Mexico film division; and

~~(8-)~~ ~~(9)~~ payroll reports for each qualified trainee that verify hours worked and all rates per hours; and

~~(9-)~~ ~~(10)~~ a notarized invoice.

~~(J-)~~ K. All paperwork and forms shall be submitted to the development training program administrator of the New Mexico film division of the economic development department.

~~(K-)~~ L. Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation.

[5.5.51.11 NMAC - Rp, 5.5.51.11 NMAC, 4-30-2009; A, 6-30-2010; A, 6-30-2011]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.52 NMAC, Sections 8 and 9, effective June 30, 2011.

5.5.52.8 PRE-EMPLOYMENT CLASS TRAINING PROGRAM OUTLINE:

A. The New Mexico film division of the economic development department shall contract a qualified contractor to provide venues, staff, equipment and materials to conduct short-term, intensive training New Mexicans in primarily below-the-line film and television crafts and that shall increase the employment opportunities of New Mexican crew on film and television projects.

B. Mandatory or regulatory training is allowed if required for employment on a film and approved by the New Mexico film division of the economic development department.

C. Total course cost shall not exceed twenty thousand dollars (\$20,000.00) regardless of the number of contractors.

D. The potential contractor shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

E. Approved contractor shall enter into an agreement as outlined by the New Mexico economic development

department.

F. The approval from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

G. The term of the contract shall be based on a time period, which shall allow the contractor to complete its obligation to facilitate and provide training classes for the qualified individuals and complete the paper-work involved.

H. Contractor shall ensure that all trainees are pursuing work in or are currently working in the film and television industry and shall either be training in a new classification or are in need of additional training in this classification.

I. Contractor shall ensure all trainees are New Mexico residents.

J. Contractor shall ensure all trainees are at least 18 years of age for all "hands-on" classes and must be accompanied by an adult if under the age of 18 years for lectures.

K. Contractor shall qualify registrants [~~per the PETF class trainee certification form which is~~] based on class pre-requisites and specific industry experience when applicable.

L. Contractors may require trainees to pay a nominal fee per the approval of the New Mexico film division.

M. All instructors and facilitators shall be certified as such by the New Mexico film division.

N. The contractor is subject to compliance visits and program surveys at any time during the training class.

O. The contractors that fail to comply with all established operating requirements and closeout procedures are not eligible to apply for future participation.

P. Eligible costs for reimbursement per PETF class application:

(1) tuition and registration fees; and

(2) certification and licensing fees for trainees when applicable; and

(3) instructional literature; and

(4) expendable supplies; and

(5) instructor and facilitator fees where these individuals are not employee of the contractor's business; and

(6) additional temporary insurance if required [~~and when approved by department's legal counsel~~] to conduct class; and

(7) facility rental; and

(8) equipment rental; and

(9) approved travel expenses

which is based on department of finance administration rule 2.42.2 NMAC, Regulations Governing Per Diem and Mileage Act.

Q. Reimbursement of training costs: Reimbursement amount shall be made to the participating contractor in accordance with the terms of the training contract. Funds from the state shall be based on the negotiated contractual agreement as outlined in the contract.

R. Reporting: The following established documentation may be required by the New Mexico film division and is subject to review during compliance visits and program surveys:

~~(1) [original class proposal] PETP class film and multimedia pre-employment training application~~ and documents noted within; and

~~(2)~~ applicable insurance certificate(s); and

~~(3)~~ New Mexico tax information form or current state vendor number; and

~~(4) PETP class film and multimedia pre-employment training application and supporting documents noted within; and]~~

~~(5)~~ ~~(4)~~ PETP class film and multimedia pre-employment agreement; and

~~(6)~~ ~~(5)~~ PETP trainee forms when applicable; and

~~(7) PETP instructor and facilitator forms; and]~~

~~(8)~~ ~~(6)~~ receipts per approved expenditures in application; and

~~(9)~~ ~~(7)~~ roster of trainees; and

~~(10)~~ ~~(8)~~ class evaluation forms when applicable; and

~~(11)~~ ~~(9)~~ invoice.

S. The mailing address to submit paperwork including the invoice is to the development training program administrator or manager, New Mexico film division of the economic development department, ~~[418 Montezuma Avenue, Santa Fe, New Mexico, 87501;]~~ 1100 St. Francis Drive, Joseph Montoya Building, Santa Fe, New Mexico, 87505, 505-476-5600. [5.5.52.8 NMAC - Rp, 5.5.52.8 NMAC, 4-30-2009, A, 6-30-2011]

5.5.52.9 PRE-EMPLOYMENT PROJECT TRAINING:

A. Project training shall assist the development of New Mexico's economy by providing reimbursement funds to contractors directly related to a production company's project for training in and exposure to primarily above-the-line film and television job positions. This program shall increase the hirability of New Mexico crew on film and television projects, increase economic status upon employment, and increase crew availability to productions. Pre-employment project training shall pertain to industry and production needs as determined by the New Mexico film division of the economic development department.

B. Production company qualifications and requirements:

(1) The production company shall provide an outline of each training concept with the NMFO proposal form to be considered for approval.

(2) The production company shall be required to provide qualifications of instructors and mentors, all relevant details, certificates and costs per the program application; and upon approval of the New Mexico film division shall enter into the film and multimedia pre-employment project training agreement as outlined by the New Mexico film division of the economic development department; and the approval from the New Mexico film division shall grant training funds to the production company for the purpose of conducting this training.

(3) The production company entering into a contractual agreement with New Mexico economic development department shall return the contractual agreement to the department within 15 business days from the issue date or commencement of project whichever date comes first.

(4) The production company shall interview and consider trainees endorsed by the New Mexico above-the-line mentorship panel (NM AMP) for this training.

(5) The production company ensures that all trainees are New Mexico residents.

(6) The production company ensures that all trainees shall receive specialized training to work in the film industry.

(7) The production company shall not have more than two trainees per mentor or instructor.

(8) The production company shall ensure each trainee completes project trainee certification form.

(9) The production company shall ensure the trainee shall be covered under their production insurance.

(10) The production company is subject to compliance visits and program surveys at any time during the training.

(11) Breaks and meals per film industry standards shall apply to participants training on production project.

(12) A minimum turn-around-time of eight hours shall apply to all training participants.

C. The production company that fail to comply with all established operating requirements and close-out procedures are not eligible to apply for future participation and may not receive the training reimbursement.

D. Instructors and mentor qualifications shall be certified as such by the New Mexico film division.

E. ~~[A maximum of 60 days on a given production company's project per trainee; however, exceptions may be~~

~~made by the director of the New Mexico film division when a request is submitted in writing to this director.] The New Mexico film division will determine the number of days per participant on a given production's project based on the number of approved trainees, length of production and available funding.~~

~~[F. Funds shall not be used to purchase equipment, software, non-expendable supplies.]~~

~~[G.] E.~~ Total training cost shall equate to twenty-five percent (25%) ~~[of daily compensation for director, producer and writer mentors and fifty percent (50%) of daily compensation for mentors in specialized crafts including but not limited to production designer, sound looping, editor, script supervisor, unit production manager, production supervisor, casting director, and story board artist:]~~ for participating above-the-line mentors and for mentors working as department heads in specialized crafts as listed in the application.

~~[H.] G.~~ Mandatory or regulatory training is allowed if required for employment on a film and approved by the New Mexico film division of economic development department.

~~[I.] H.~~ The term of the contract shall be based on a time period, which shall allow the production company to complete its obligation to facilitate and provide training classes for the qualified individuals and complete the paper-work involved.

~~[J.] I.~~ R e i m b u r s e m e n t of training costs shall be made to the participating production company in accordance with the terms of the contract which is based upon the costs to facilitate training.

~~[K.] J.~~ The rate established in the contract shall remain the same for the length of the agreement.

~~[L.] K.~~ The invoice shall include all costs accepted and stated in the application and contract.

~~[M.] L.~~ The mailing address to submit the invoice and all required information is development training program administrator of the New Mexico film division of the economic development department, ~~[418 Montezuma Avenue, Santa Fe, New Mexico, 87501;]~~ 1100 St. Francis Drive, Joseph Montoya Building, Santa Fe, New Mexico, 87505, 505-476-5600.

~~[N.] M.~~ **Reporting:** The following established documentation may be required by the New Mexico film division and is subject to review during compliance visits and program surveys:

(1) PETP project proposal; and

(2) New Mexico tax information form; and

(3) film and multimedia pre-employment project training application and supporting documents noted within; and

(4) film and multimedia pre-employment project agreement; and

(5) project trainee certification form for each trainee and supporting documentation noted within; and

(6) copy of production insurance; and

(7) final roster of trainees that have completed the training with individual's contact information; and

(8) call sheet or equivalent documentation as determined by the New Mexico film division for each day of training; and

(9) time cards or equivalent documentation as determined by the New Mexico film; and

(10) evaluation forms; and

(11) invoice.

~~(12)~~ **N.** All records shall be submitted to the New Mexico film division of the economic development department and they are subject to review during compliance visits and program surveys. [5.5.52.9 NMAC - Rp, 5.5.52.9 NMAC, 4-30-2009, A, 6-30-2011]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.73 NMAC, Section 300, effective 7/6/2011.

20.2.73.300 EMISSION INVENTORY REQUIREMENTS:

A. Applicability. The requirements of 20.2.73.300 NMAC apply to the owner or operator of any stationary source located outside of Bernalillo county which:

(1) has been issued a permit under 20.2.72 NMAC (Construction Permits) during any period of time, except for toxic air pollutant permits issued under Sections 401 to 499 of 20.2.72 NMAC;

(2) is required to file a notice of intent under 20.2.73.200 NMAC; or

(3) emits in excess of 1 ton of lead or 10 tons of total suspended particulate, PM10, PM2.5, sulfur dioxide, nitrogen oxides, carbon monoxide, or volatile organic compounds in any calendar year including and subsequent to 1990.

B. Reporting requirements.

(1) Any source which emits, or has the potential to emit, 5 tons per year or more of lead or lead compounds, or 100 tons per year or more of PM10, PM2.5, sulfur oxides, nitrogen oxides, carbon monoxide, or volatile organic compounds shall submit an emissions report annually.

(2) Any source defined as a major source of hazardous air pollutants under

20.2.70 NMAC (Operating Permits) shall submit an emissions report annually.

(3) Any source which is located in an ozone nonattainment area and which emits, or has the potential to emit, 25 tons per year or more of nitrogen oxides or volatile organic compounds shall submit an emissions report annually.

(4) Any source which is not required by Paragraph (1), (2), or (3) of Subsection B of this section (20.2.73.300 NMAC) to submit an emission report shall submit an emissions report under this part upon request by the department, but no more frequently than annually.

(5) Except as provided in Paragraph (8) of Subsection B of this section (20.2.73.300 NMAC), the department shall provide to the owner or operator required by this section (20.2.73.300 NMAC) to submit an emissions report a complete copy of the most current emissions report for their stationary source which is on file with the department. The department shall provide this copy to the owner or operator at least 90 days prior to the date when the source is required to submit an emissions report.

(6) The owner or operator shall submit to the department a complete, correct and current emissions report in the format specified by the department which reflects emissions during the previous calendar year.

(7) Except as provided in Paragraph (8) of Subsection B of this section (20.2.73.300 NMAC) the owner or operator shall submit the emission report by April 1 of each year in which the source is required to submit an emission report.

(8) Sources for which a date for submitting an annual emission report is specified in a current operating permit issued under 20.2.70 NMAC (Operating Permits) shall submit such report on that date. The department shall provide a copy of the previous emissions report upon request by the owner or operator of such source.

(9) Any source that is requested by the department to submit a report of greenhouse gas emissions shall:

(a) submit such report on the schedule and according to the greenhouse gas emissions reporting procedures established by the department, but not more often than annually; or

(b) report greenhouse gas emissions from the source under 20.2.87 NMAC for the greenhouse gas emissions reporting year and the two years following that year; or

(c) provide the department access to the requested information for the greenhouse gas emissions reporting year registered in either the climate registry or the California climate action registry; and

(d) keep records in support of the report for a minimum of five years.

(10) In determining the schedule

of greenhouse gas emissions reports and reporting procedures, the department, subject to Paragraph (11) below, shall provide an opportunity for public comment, and shall consider:

(a) public comments regarding the schedule of such reports and greenhouse gas emissions reporting procedures;

(b) emissions quantification standards and best practices approved or recommended by federal and state agencies, by greenhouse gas emissions registries, and by non-governmental bodies having expertise in greenhouse gas emissions quantification;

(c) whether greenhouse gases emissions from a particular source or source type, considering the amount and chemical composition of the emissions, are expected to be minimal relative to emissions from other sources or source types, and

(d) whether emissions of a particular greenhouse gas from a source or source type, considering the amount and chemical composition of the emissions, are expected to be minimal relative to the total greenhouse gas emissions from that source or source type.

(11) The schedule for greenhouse gas emissions reports and reporting procedures pursuant to Paragraphs (9) and (10) of Subsection B of 20.2.73.300 NMAC, shall:

(a) subject to the department's selection of best available quantification methodologies, include a requirement that sources within North American industry classification system codes 211111, 211112, 213111, 213112, 486210, 221210, 486110, and 486910 subject to this part and permit requirements pursuant to 20.2.70 NMAC (Operating Permits) report at a minimum emissions of carbon dioxide and methane beginning no later than reporting year 2009 and for subsequent reporting years; and

(b) subject to the department's selection of best available quantification methodologies, include a requirement that sources within North American industry classification system codes 211111, 211112, 213111, 213112, 486210, 221210, 486110, and 486910 subject to this part pursuant to Paragraphs (1) and (2) of Subsection A of 20.2.73.300 NMAC, and not otherwise covered by Subparagraph (a), above, report at a minimum emissions of carbon dioxide and methane no later than reporting year 2010 and for subsequent reporting years as requested by the department.

C. Content of emissions reports. Emissions report contents for reports made under Paragraphs (1) through (8) of Subsection B of 20.2.73.300 NMAC shall include:

(1) the name, address, if any, and physical location of the stationary source;

(2) the name and telephone

number of the person to contact regarding the emissions report;

(3) a certification signed by the owner, or operator, or a responsible official as defined in 20.2.70 NMAC attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone number of the certifying official; for sources subject to 20.2.70 NMAC, the certification shall be made as required under that part;

(4) smelters shall submit an annual report of sulfur input, in tons/year;

(5) for each emission point, as required by the department:

(a) stack and exhaust gas parameters and location information;

(b) type of control equipment and estimated control efficiency;

(c) schedule of operation;

(d) estimated actual emissions, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime of total suspended particulate, PM10, PM2.5, ammonia, sulfur oxides, nitrogen oxides, carbon monoxide, volatile organic compounds, and lead, and, if requested by the department, speciated hazardous air pollutants, in tons per year and a description of the methods utilized to make such estimates, including calculations;

(e) the annual process or fuel combustion rates; and

(f) the fuel heat, sulfur, and ash content; and

(6) all information required under the federal act.

D. Additional content for emissions reports from sources in ozone nonattainment areas. Emissions reports from sources located in ozone nonattainment areas shall include, in addition to the contents specified by Subsection C of this section (20.2.73.300 NMAC), the following information:

(1) typical daily process rate during the peak ozone season, where the peak ozone season is specified by the department; and

(2) estimated actual emissions of nitrogen oxides and volatile organic compounds, which shall be reported:

(a) for each emissions point;

(b) for each process and fuel type contributing to emissions from each point;

(c) in units of tons per year for annual emissions; and

(d) in units of pounds per day for a typical day during the peak ozone season.

E. Waiver of reporting requirements for insignificant emissions. The department may waive the requirements of Paragraph (5) of Subsection C of this section (20.2.73.300 NMAC) for emissions

which the department determines to be insignificant under 20.2.70 NMAC, except that:

(1) for sources in nonattainment areas, reporting of emissions of pollutants for which the area is nonattainment shall not be waived; and

(2) reporting of emissions for which reporting is required under the federal act shall not be waived.

F. Emission tracking requirements for sulfur dioxide emission inventories. All stationary sources with actual emissions of one hundred (100) tons per year or more of sulfur dioxide in the year 2000, or in any subsequent year, shall submit an annual inventory of sulfur dioxide emissions, beginning with the 2003 emission inventory. A source that meets these criteria that then emits less than 100 tons per year in a later year shall submit a sulfur dioxide inventory for tracking compliance with the regional sulfur dioxide milestones until the western backstop sulfur dioxide trading program has been fully implemented and emission tracking has occurred under 20.2.81.106 NMAC.

(1) All WEB sources will be subject to the following federally enforceable provisions:

(a) submit an annual inventory of sulfur dioxide emissions;

(b) document the emissions monitoring/estimation methodology used, and demonstrate that the selected methodology is acceptable under the inventory program;

(c) include emissions from start up, shut down, and upset conditions in the annual total inventory;

(d) use 40 CFR Part 75 methodology for reporting emissions for all sources subject to the federal acid rain program;

(e) maintain all records used in the calculation of the emissions, including but not limited to the following:

(i) amount of fuel consumed;

(ii) percent sulfur content of fuel and how the content was determined;

(iii) quantity of product monitoring data;

(iv) emissions monitoring data;

(v) operating data; and

(vi) how the emissions are calculated;

(f) maintain records of any physical changes to facility operations or equipment, or any other changes that may affect the emissions projections; and

(g) retain records for a minimum of ten years from the date of establishment, or if the record was the basis for an adjustment to the milestone, five years after the date of

an implementation plan revision, whichever is longer.

(2) Changes in emission measurement techniques. Each source subject to this subsection that uses a different emission monitoring or calculation method than was used to report sulfur dioxide emissions in 2006 under this part or 40 CFR Part 75 shall adjust their reported emissions to be comparable to the emission monitoring or calculation method that was used in 2006. The calculations that are used to make this adjustment shall be included with the annual emission report.

~~(2)~~ (3) The [state] department shall retain emission inventory records for non-utilities for [1996 and 1998] 2006 until the year 2018 to ensure that changes in emissions monitoring techniques can be tracked.

G. Content of greenhouse gas emissions reports. Greenhouse gas emissions reports shall contain the following information, as set out in the greenhouse gas emissions reporting procedures established under Subparagraph (a) of Paragraph (9) of Subsection B of 20.2.73.300 NMAC:

(1) the name, location, and permit or notice of intent number of the stationary source;

(2) the name and telephone number of the person to contact regarding the greenhouse gas emissions report;

(3) a certification signed by the owner or operator attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone number of the certifying official;

(4) for each emission point as required by the department under the greenhouse gas emissions reporting procedures, the estimated actual emissions of greenhouse gases, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets and downtime; and

(5) if requested by the department, the fuel type, fuel heat content, and fuel carbon content.

[11/30/95, 10/01/97; 2.20.73.300 NMAC - Rn, 20 NMAC 2.73.300 - 304 02/18/02; A, 12/31/03; A, 12/31/04; A, 01/01/08; A, 07/06/11]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.81 NMAC, Sections 7, 100, 101, 106, 108, 109 and 110, effective 7/6/2011.

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

A. “Account certificate of representation” means the completed and signed submission required to designate an account representative for a web source or an account representative for a general account.

B. “Account representative” means the individual who is authorized through an account certificate of representation to represent owners and operators of the WEB source with regard to matters under the web trading program or, for a general account, who is authorized through an account certificate of representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account.

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

D. “Actual emissions” means total annual sulfur dioxide emissions determined in accordance with 20.2.81.106 NMAC, or determined in accordance with 20.2.73 NMAC for sources that are not subject to 20.2.81.106 NMAC.

E. “Allocate” means to assign allowances to a WEB source through Section C1 of the implementation plan.

F. “Allowance” means the limited authorization under the WEB trading program to emit one ton of sulfur dioxide during a specified control period or any control period thereafter subject to the terms and conditions for use of unused allowances as established by 20.2.81 NMAC.

G. “Allowance limitation” means the tonnage of sulfur dioxide emissions authorized by the allowances available for compliance deduction for a WEB source for a control period under 20.2.81.109 NMAC on the allowance transfer deadline for that control period.

H. “Allowance tracking system” means the system developed by the department where allowances under the WEB trading program are recorded, held, transferred and deducted.

I. “Allowance tracking system account” means an account in the allowance tracking system established for purposes of recording, holding, transferring, and deducting allowances.

J. “Allowance transfer deadline” means the deadline established in Subsection B of 20.2.81.107 NMAC when allowances must be submitted for recording in a WEB source’s compliance account in order to demonstrate compliance for that control period.

K. “Best available retrofit technology (BART)” means that emission reduction control device, facility, method, or system, used to achieve the best continuous emission reduction for each pollutant emitted by an existing stationary facility. The emission limitation shall be established on a case-by-case basis taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

[K] L. “Compliance account” means an account established in the allowance tracking system under Subsection A of 20.2.81.105 NMAC for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation.

[E] M. “Compliance certification” means a submission to the department by the account representative as required under Subsection B of 20.2.81.109 NMAC to report a WEB source’s compliance or noncompliance with 20.2.81 NMAC.

[M] N. “Control period” means the period beginning January 1 of each year and ending on December 31 of the same year, inclusive.

O. “Emission unit” means any part of a stationary source that emits or would have the potential to emit any pollutant [submitted] subject to regulations under the Clean Air Act.

[N] P. “Emissions tracking database” means the central database where sulfur dioxide emissions for WEB sources as recorded and reported in accordance with 20.2.81 NMAC are tracked to determine compliance with allowance limitations.

[P] Q. “Existing source” means, a stationary source that commenced operation before the program trigger date.

[Q] R. “Fugitive emissions” are those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

[R] S. “General account” means an account established in the allowance tracking system under 20.2.81.105 NMAC for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation.

[S] T. “Milestone” means the maximum level of stationary source regional

sulfur dioxide emissions for each year from 2003 to 2018, established according to the procedures in section A of the sulfur dioxide milestones and backstop trading program implementation plan.

[F] U. “New web source” means a WEB source that commenced operation on or after the program trigger date.

[U] V. “New source set-aside” means a pool of allowances that are available for allocation to new sources in accordance with the provisions [of section C (a)1.3] of the sulfur dioxide milestones and backstop trading program implementation plan.

[V] W. “Owner or operator” means any person who is an owner or who operates, controls or supervises a WEB source, and includes but is not be limited to any holding company, utility system or plant manager.

[W] X. “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.

[X] Y. “Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is enforceable by the EPA administrator.

[Y] Z. “Program trigger date” means the date that the department determines that the WEB trading program has been triggered in accordance with the provisions of section A2 of the sulfur dioxide milestones and backstop trading program implementation plan.

[Z] AA. “Program trigger years” means the years shown in table 1, column 3, of the sulfur dioxide milestones and backstop trading program implementation plan for the applicable milestone if the WEB trading program is triggered as described in section A of the sulfur dioxide milestones and backstop trading program implementation plan.

~~[AA. “renewable energy resource” means a resource that generates electricity by non-nuclear and non-fossil technologies that results in low or no air emissions; the term includes electricity generated by wind energy technologies; solar photovoltaic and solar thermal technologies; geothermal technologies; technologies based on landfill gas and biomass sources; and new low-impact hydropower that meets the low-impact hydropower institute criteria; biomass includes agricultural, food and wood wastes; the term does not include~~

pumped storage or biomass from municipal solid waste, black liquor, or treated wood;]

AB. “Retired source” means a WEB source that has received a retired source exemption as provided in Subsection D of 20.2.81.101 NMAC. Any retired source resuming operations under Subsection D of 20.2.81.101 NMAC, must submit its exemption as part of its registration materials.

AC. “Serial number” means, when referring to allowances, the unique identification number assigned to each allowance by the tracking systems administrator, in accordance with Subsection B of 20.2.81.104 NMAC.

AD. “Special reserve compliance account” means an account established in the allowance tracking system under 20.2.81.105 NMAC for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation for emission units that are monitored for sulfur dioxide in accordance with 20.2.81.106 NMAC.

~~[AD]~~ **AE. “Sulfur dioxide emitting unit”** means any equipment that is located at a WEB source and that emits sulfur dioxide.

~~[AE]~~ **AF. “Sulfur dioxide milestones and backstop trading program implementation plan”** or “implementation plan” means section C of the New Mexico regional haze state implementation plan [revision adopted by the environmental improvement board on November 18, 2003;].

~~[AF]~~ **AG. “Stationary source”** means any building, structure, facility or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act.

~~[AG]~~ **AH. “Submit”** means sent to the appropriate authority under the signature of the account representative. For purposes of determining when something is submitted, an official U.S. postal service postmark, or equivalent electronic time stamp, shall establish the date of submittal.

~~[AH]~~ **AI. “Ton”** means 2000 pounds and, for any control period, any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any fraction of a ton equaling less than 1000 pounds shall be treated as zero tons.

~~[AI]~~ **AJ. “Tracking system administrator”** means the person designated by the department as the administrator of the allowance tracking system and the emission tracking database.

~~[AJ]~~ **AK. “Web source”** means a stationary source that meets the applicability requirements of 20.2.81.101 NMAC.

~~[AK]~~ **AL. “Western backstop sulfur dioxide trading program (“WEB trading program”)** means 20.2.81 NMAC, triggered as a backstop in

accordance with the provisions in the sulfur dioxide milestones and backstop trading program implementation plan, if necessary, to ensure that regional sulfur dioxide emissions are reduced.

[20.2.81.7 NMAC - N, 12/31/03; A, 07/06/11]

20.2.81.100 WEB TRADING PROGRAM TRIGGER:

A. Except as provided in Subsection B of this section, the provisions of 20.2.81 NMAC shall [become effective] apply on the program trigger date that is established in accordance with the procedures outlined in the sulfur dioxide milestones and backstop trading program implementation plan.

B. 20.2.81.110 NMAC, special penalty provisions for [year] 2018 milestone, shall [become effective] apply on January 1, 2018 and shall remain effective until the provisions of 20.2.81.110 NMAC have been fully implemented.

C. The department shall report to the environmental improvement board every two years following the trigger of this program on the distributions of emissions allowances under the program.

[20.2.81.100 NMAC - N, 12/31/03; A, 07/06/11]

20.2.81.101 WEB TRADING PROGRAM APPLICABILITY:

A. General applicability. 20.2.81 NMAC applies to any stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and which are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in Paragraphs 1 through 4 of Subsection B. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group [~~(i.e., AH have the same two-digit code)]~~ as described in the [standard industrial classification manual, 1987] North American industry classification system (NAICS), 2007.

B. The following are WEB sources.

(1) All BART-eligible sources as defined in 40 CFR 51.301 that are BART-eligible due to sulfur dioxide emissions.

(2) All stationary sources not meeting the criteria of Paragraph 1 of Subsection B of 20.2.81.101 NMAC, that have actual sulfur dioxide emissions of 100 tons or more per year in the program trigger years or any subsequent year. The fugitive emissions of a stationary source shall not be considered in determining whether it is a WEB source unless the source belongs to

one of the following categories of stationary source:

- (a) coal cleaning plants (with thermal dryers);
 - (b) Kraft pulp mills;
 - (c) Portland cement plants;
 - (d) primary zinc smelters;
 - (e) iron and steel mills;
 - (f) primary aluminum ore reduction plants;
 - (g) primary copper smelters;
 - (h) municipal incinerators capable of charging more than 250 tons of refuse per day;
 - (i) hydrofluoric, sulfuric, or nitric acid plants;
 - (j) petroleum refineries;
 - (k) lime plants;
 - (l) phosphate rock processing plants;
 - (m) coke oven batteries;
 - (n) sulfur recovery plants;
 - (o) carbon black plants (furnace process);
 - (p) primary lead smelters;
 - (q) fuel conversion plants;
 - (r) sintering plants;
 - (s) secondary metal production plants;
 - (t) chemical process plants;
 - (u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - (v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (w) taconite ore processing plants;
 - (x) glass fiber processing plants;
 - (y) charcoal production plants;
 - (z) fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
 - (aa) any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the Clean Air Act.
- (3) A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of sulfur dioxide per year.
- (4) The department may determine on a case-by-case basis, with concurrence from the EPA administrator, that a source defined in Paragraph 2 of Subsection B of 20.2.81.101 NMAC is not a WEB source if the source:
- (a) in each of the previous five years had actual sulfur dioxide emissions of less than 100 tons per year; and
 - (b) had actual sulfur dioxide emissions of 100 tons or more in a single year due to a temporary emission increase that was caused by a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, failure of process equipment, or a failure to operate in

a normal or usual manner; and

(c) took timely and reasonable action to minimize the temporary emission increase; and

(d) has corrected the failure of air pollution control equipment, process equipment, or process by the time of the department's determination under this section; or

(e) had to switch fuels or feedstocks on a temporary basis and as a result of an emergency situation or unique and unusual circumstances besides cost of such fuels or feedstocks; and

(f) a temporary emission increase due to poor maintenance or careless operation does not meet the criteria of this section.

C. Duration of program participation. Except as provided for in Subsection D of 20.2.81.101 NMAC, once a source is subject to the WEB trading program, it will remain in the program every year thereafter.

D. Retired source exemption: application.

(1) Any WEB that is retired shall apply for a retired source exemption. The WEB source may only be considered retired if all sulfur dioxide emitting units at the source are retired. The application shall contain all of the following information:

(a) identification of the WEB source, including plant name and an appropriate identification code in a format specified by the department;

(b) name of account representative;

(c) description of the status of the WEB source, including the date that the WEB source was retired;

(d) signed certification that the WEB source is retired and will comply with the requirements of Subsection D of 20.2.81.101 NMAC; and

(e) verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

(2) **Responsibilities of retired sources.** The retired source exemption becomes effective when the department notifies the source that the retired source exemption has been granted.

(3) A retired source shall be exempt from 20.2.81.106 NMAC and 20.2.81.109 NMAC, except as provided below.

(a) A retired source shall not emit any sulfur dioxide after the date the retired source exemption is effective.

(b) A WEB source shall submit sulfur dioxide emissions reports, as required by Subsection O of 20.2.81.106 NMAC for any time period the source was operating prior to the effective date of the retired source exemption. The retired source shall be subject to the compliance provisions of 20.2.81.109 NMAC, including the

requirement to hold allowances in the source's compliance account to cover all sulfur dioxide emissions prior to the date the source was permanently retired.

(c) A retired source that is still in existence but no longer emitting sulfur dioxide shall, for a period of five years from the date the records are created, retain records demonstrating the effective date of the retired source exemption for purposes of this part.

(4) Resumption of operations.

(a) Should a retired source desire to resume operation, the retired source shall submit registration materials as follows:

(i) if the source is required to obtain a new source review permit or operating permit under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC prior to resuming operation, then the source shall submit registration information as described in 20.2.81.103 NMAC and a copy of the retired source exemption with the application required under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC; or

(ii) if the source is not required to obtain a new source review permit or operating permit under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC prior to resuming operation, then the source shall submit registration information as described in Subsection A of 20.2.81.103 NMAC and a copy of the retired source exemption to the department at least ninety days prior to resumption of operation.

(b) The retired source exemption shall automatically expire on the day the source resumes operation.

(5) **Loss of future allowances.** A WEB source that is retired and that does not apply to the department for a retired source exemption within ninety days of the date that the source is retired shall forfeit any unused and future allowances. The abandoned allowances shall be retired by the tracking system administrator.

[20.2.81.101 NMAC - N, 12/31/03; A, 07/06/11]

20.2.81.106 MONITORING, RECORDKEEPING AND REPORTING - GENERAL REQUIREMENTS ON MONITORING METHODS:

A. For each sulfur dioxide emitting unit at a WEB source shall comply with the following, as applicable, to monitor and record sulfur dioxide mass emissions.

(1) If a unit is subject to 40 CFR Part 75 under a requirement separate from the WEB trading program, the unit shall meet the requirements contained in Part 75 with respect to monitoring, recording and reporting sulfur dioxide mass emissions.

(2) If a unit is not subject to 40 CFR Part 75 under a requirement separate from the WEB trading program, a unit

shall use one of the following monitoring methods, as applicable:

(a) a continuous emission monitoring system (CEMS) for sulfur dioxide and flow that complies with all applicable monitoring provisions in 40 CFR Part 75;

(b) if the unit is a gas- or oil-fired combustion device, the [accepted] excepted monitoring methodology in Appendix D to 40 CFR Part 75, or, if applicable, the low mass emissions (LME) provisions (with respect to sulfur dioxide mass emissions only) of Section 75.19 of 40 CFR Part 75;

(c) one of the optional WEB protocols, if applicable, in 20.2.81.111 NMAC or 20.2.81.112 NMAC; or

(d) a petition for site-specific monitoring that the source submits for approval by the department, and approval by the U.S. environmental protection agency in accordance with Paragraph 5 of Subsection O of 20.2.81.106 NMAC.

(3) A permanently retired unit shall not be required to monitor under this section if such unit was permanently retired and had no emissions for the entire period for which the WEB source implements this Paragraph 3 and the account representative certifies in accordance with Subsection B of 20.2.81.109 NMAC that these conditions were met. In the event that a permanently retired unit recommences operation, the WEB source shall meet the requirements of this Section 20.2.81.106 NMAC in the same manner as if the unit was a new unit.

B. Notwithstanding Subsection A of this section, the WEB source with a unit that meets one of the conditions of Paragraph 1 of Subsection B of 20.2.81.106 NMAC may elect to have the provisions of this Paragraph 1 apply to that unit.

(1) Any of the following units may implement Subsection B of 20.2.81.106 NMAC:

(a) any smelting operation where all of the emissions from the operation are not ducted to a stack;

(b) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or

(c) any other type of unit without add-on sulfur dioxide control equipment, if no control level was assumed for the WEB source in establishing the floor level (and reducible allocation) provided in section C1 of the implementation plan.

(2) For each unit covered by Subsection B of 20.2.81.106 NMAC, the account representative shall submit a notice to request that Subsection B of 20.2.81.106 NMAC apply to one or more sulfur dioxide emitting units at a WEB source. The notice shall be submitted in accordance with the compliance dates specified in Paragraph 1 of Subsection M of 20.2.81.106 NMAC, and

shall include the following information (in a format specified by the department with such additional, related information as may be requested):

(a) a notice of all units at the applicable source, specifying which of the units are to be covered by Subsection B of 20.2.81.106 NMAC;

(b) consistent with the emission estimation methodology used to determine the floor level (and reducible allocation) for the source in accordance with section C1 of the implementation plan, the portion of the WEB source's overall allowance allocation that is attributable to any unit(s) covered by this paragraph; and

(c) an identification of any such units that are permanently retired.

(3) For each new unit at an existing WEB source for which the WEB source seeks to comply with this Subsection B of 20.2.81.106 NMAC; and for which the account representative applies for an allocation under the new source set-aside provisions of Subsection F of 20.2.81.104 NMAC, the account representative shall submit a modified notice under Paragraph 2 of Subsection B of 20.2.81.106 NMAC, that includes such new sulfur dioxide emitting unit(s). The modified notice shall be submitted in accordance with the compliance dates in Paragraph 1 of Subsection M of 20.2.81.106 NMAC, but no later than the date on which a request is submitted under Paragraph 1 of Subsection F of 20.2.81.104 NMAC for allocations from the set-aside.

(4) The department shall evaluate the information submitted by the WEB source in Paragraphs 2 and 3 of Subsection B of 20.2.81.106 NMAC, and may issue a notice to the source to exclude any units that do not qualify under this Subsection B of 20.2.81.106 NMAC or to adjust the portion of allowances attributable to units that do qualify to be consistent with the emission estimation methodology used to establish the floor level (and reducible allocation) for the source.

(5) The department shall allocate allowances equal to the adjusted portion of the WEB source's allowances under Paragraphs 2, 3, and 4 of Subsection B of 20.2.81.106 NMAC in a special reserve compliance account provided that no such treatment of the WEB source's allocation will be required for any unit that is permanently retired and had no emissions for the entire period for which the WEB source implements this Subsection B and the account representative certifies in accordance with 20.2.81.109 NMAC that these conditions are met. In the event that a permanently retired unit recommences operation, the WEB source shall meet the requirements of this Section 20.2.81.106 NMAC in the same manner as if the unit was a new unit.

(6) The account representative

for a WEB source shall submit an annual emissions statement for each unit under this Subsection B of 20.2.81.106 NMAC in accordance with Subsection O of 20.2.81.106 NMAC. The WEB source shall maintain operating records sufficient to estimate annual emissions in a manner consistent with the emission estimation methodology used to establish the floor level (and reducible allocation) for the source. In addition, if the estimated emissions from all such units at the WEB source are greater than the allowances for the current control year held in the special reserve compliance account under Paragraph 5 of Subsection B of 20.2.81.106 NMAC for the WEB source, the account representative shall report the excess amount as part of the annual report for the WEB source under 20.2.81.109 NMAC and be required to use other allowances in the standard compliance account for the WEB source to account for such emissions, in accordance with 20.2.81.109 NMAC.

(7) The remaining provisions of this section shall not apply to units covered by Subsection B of 20.2.81.106 NMAC except where otherwise noted.

(8) A WEB source may opt to modify the monitoring for an sulfur dioxide emitting unit to use monitoring under Subsection A of 20.2.81.106 NMAC, but any such monitoring change shall take effect on January 1 of the next compliance year. In addition, the account representative shall submit an initial monitoring plan at least 180 days prior to the date on which the new monitoring will take effect and a detailed monitoring plan in accordance with Subsection D of 20.2.81.106 NMAC. The account representative shall also submit a revised notice under Subsection B of 20.2.81.106 NMAC at the same time that the initial monitoring plan is submitted.

C. For any monitoring that the WEB source uses under this section (including Paragraph 1), the WEB source (and, as applicable, the account representative) shall implement, certify, and use such monitoring in accordance with this section, and shall record and report the data from such monitoring as required in this section. In addition, the WEB source (and, as applicable, the account representative) shall not:

(1) except for an alternative approved by the U.S. EPA administrator for a WEB source that implements monitoring under Paragraph 1 of Subsection A of 20.2.81.106 NMAC, use an alternative monitoring system, alternative reference method or another alternative for the required monitoring method without having obtained prior written approval in accordance with Paragraph 5 of Subsection O of 20.2.81.106 NMAC;

(2) operate an sulfur dioxide emitting unit so as to discharge, or allow to

be discharged, sulfur dioxide emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of this section;

(3) disrupt the approved monitoring method or any portion thereof, and thereby avoid monitoring and recording sulfur dioxide mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this section; or

(4) retire or permanently discontinue use of an approved monitoring method, except under one of the following circumstances:

(a) during a period when the unit is exempt from the requirements of this section, including retirement of a unit as addressed in Paragraph 3 of Subsection A of 20.2.81.106 NMAC;

(b) the WEB source is monitoring emissions from the unit with another certified monitoring method approved under this section for use at the unit that provides data for the same parameter as the retired or discontinued monitoring method; or

(c) the account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with this section, and the WEB source recertifies thereafter a replacement monitoring system in accordance with the applicable provisions of this section.

D. Monitoring plan general provisions. The WEB source of a sulfur dioxide emitting unit that uses a monitoring method under Paragraph 2 of Subsection A of 20.2.81.106 NMAC shall meet the following requirements:

(1) prepare and submit to the department an initial monitoring plan for each monitoring method that the WEB source uses to comply with this section; in accordance with Subsection F of 20.2.81.106 NMAC, the plan shall contain sufficient information on the units involved, the applicable method, and the use of data derived from that method to demonstrate that all unit sulfur dioxide emissions are monitored and reported; the plan shall be submitted in accordance with the compliance deadlines specified in Subsection M of 20.2.81.106 NMAC;

(2) prepare, maintain and submit to the department a detailed monitoring plan prior to the first day of certification testing in accordance with the compliance deadline specified in Subsection M of 20.2.81.106 NMAC; the plan shall contain the applicable information required by Subsection D of 20.2.81.106 NMAC; the department may require that the monitoring plan (or portions thereof) be submitted electronically; the department also may require that the plan be submitted on an ongoing basis in electronic

format as part of the quarterly report submitted under Paragraph 1 of Subsection O of 20.2.81.106 NMAC or resubmitted separately within after any change is made to the plan in accordance with the following Paragraph 3 of Subsection D of 20.2.81.106 NMAC; and

(3) whenever the WEB source makes a replacement, modification, or change in one of the systems or methodologies provided for in Paragraph 2 of Subsection A of 20.2.81.106 NMAC, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan (e.g., a change to serial number for a component of a monitoring system), then the WEB source shall update the monitoring plan in accordance with the compliance deadline specified in Subsection M of ~~[20.2081.106 NMAC]~~ 20.2.81.106 NMAC.

E. A WEB source with a sulfur dioxide emitting unit that uses a method under Paragraph 1 of Subsection A of 20.2.81.106 NMAC (a unit subject to 40 CFR Part 75 under a program other than this WEB trading program) shall meet the requirements of Subsections D-I of 20.2.81.106 NMAC by preparing, maintaining and submitting a monitoring plan in accordance with the requirements of 40 CFR Part 75, provided that the WEB source also shall submit the entire monitoring plan to the department upon request.

F. Initial monitoring plan. The account representative shall submit an initial monitoring plan for each sulfur dioxide emitting unit (or group of units sharing a common methodology) that, except as otherwise specified in an applicable provision in 20.2.81.111 NMAC, contains the following information.

(1) For all sulfur dioxide emitting units involved in the monitoring plan:

(a) plant name and location;

(b) plant and unit identification numbers assigned by the department;

(c) type of unit (or units for a group of units using a common monitoring methodology);

(d) identification of all stacks or pipes associated with the monitoring plan;

(e) types of fuel(s) fired (or sulfur containing process materials used in the sulfur dioxide emitting unit), and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 methodology;

(f) type(s) of emissions controls for sulfur dioxide installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;

(g) maximum hourly heat input capacity, or process throughput capacity, if

applicable;

(h) identification of all units using a common stack; and

(i) indicator of whether any stack identified in the plan is a bypass stack.

(2) For each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures. If the proposed methodology is a site-specific methodology submitted pursuant to Subparagraph d of Paragraph 2 of Subsection A of 20.2.81.106 NMAC, the description under this paragraph shall describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures.

(3) If the WEB source intends to petition for a change to any specific monitoring requirement otherwise required under this section, such petition may be submitted as part of the initial monitoring plan.

(4) The department may issue a notice of approval or disapproval of the initial monitoring plan based on the compliance of the proposed methodology with the requirements for monitoring in this section.

G. Detailed monitoring plan. The account representative shall submit a detailed monitoring plan that, except as otherwise specified in an applicable provisions in 20.2.81.111 NMAC or 20.2.81.112 NMAC, shall contain the following information.

(1) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer or probe) in a CEMS (e.g., sulfur dioxide pollutant concentration monitor, flow monitor, moisture monitor), a 40 CFR Part 75, Appendix D monitoring system (e.g., fuel flowmeter, data acquisition and handling system), or a protocol in 20.2.81.111 NMAC or 20.2.81.112 NMAC, including:

(a) manufacturer, model number and serial number;

(b) component or system identification code assigned by the facility to each identifiable monitoring component, such as the analyzer or probe;

(c) designation of the component type and method of sample acquisition or operation (e.g., in situ pollutant concentration monitor or thermal flow monitor);

(d) designation of the system as a primary or backup system;

(e) first and last dates the system reported data;

(f) status of the monitoring

component; and

(g) parameter monitored.

(2) Identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

(a) hardware components that perform emission calculations or store data for quarterly reporting purposes (provide the manufacturer and model number); and

(b) software components (provide the identification of the provider and model or version number).

(3) Explicit formulas for each measured emissions parameter, using component or system identification codes for the monitoring system used to measure the parameter that links the system observations with the reported concentrations and mass emissions. The formulas shall contain all constants and factors required to derive mass emissions from component or system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged. The WEB source with a low mass emissions unit for which the WEB source is using the optional low mass emissions ~~[accepted]~~ excepted methodology in Section 75.19(c) of 40 CFR Part 75 is not required to report such formulas.

(4) Inside cross-sectional area (square feet) at flow monitoring location (for units with flow monitors, only).

(5) If using CEMS for sulfur dioxide and flow, for each parameter monitored: scale, maximum potential concentration (and method of calculation), maximum expected concentration (if applicable) (and method of calculation), maximum potential flow rate (and method of calculations), span value, full-scale range, daily calibration units of measure, span effective date and hour, span inactivation date and hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value in standard cubic feet per hour (scfh) for each unit or stack using sulfur dioxide or flow component monitors.

(6) If the monitoring system or ~~[accepted]~~ excepted methodology provides for use of a constant, assumed, or default value for a parameter under specific circumstances, then the following information for each value of such parameter shall be included:

(a) identification of the parameter;

(b) default, maximum, minimum, or constant value, and units of measure for the value;

(c) purpose of the value;

(d) indicator of use during controlled and uncontrolled hours;

(e) types of fuel;

(f) source of the value;

(g) value effective date and hour;

(h) date and hour value is no

longer effective (if applicable); and

(i) for units using the [accepted] excepted methodology under Section 75.19 of 40 CFR Part 75, the applicable sulfur dioxide emission factor.

(7) Unless otherwise specified in Section 6.5.2.1 of Appendix A to 40 CFR Part 75, for each unit or common stack on which hardware CEMS are installed:

(a) the upper and lower boundaries of the range of operation (as defined in Section 6.5.2.1 of Appendix A to 40 CFR Part 75), or thousand of lb/hr of steam, or ft/sec (as applicable);

(b) the load or operating level(s) designated as normal in Section 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of pounds per hour lb/hr of steam, or feet per second ft/sec (as applicable);

(c) the two load or operating levels (i.e., low, mid, or high) identified in Section 6.5.2.1 of Appendix A to 40 CFR Part 75 as the most frequently used;

(d) the date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently-used load (or operating) levels; and

(e) activation and deactivation dates when the normal load or operating level(s) change and are updated.

(8) For each unit that is complying with 40 CFR Part 75 for which the optional fuel flow-to-load test in Section 2.1.7 of Appendix D to 40 CFR Part 75 is used:

(a) the upper and lower boundaries of the range of operation (as defined in Section 6.5.2.1 of Appendix A to 40 CFR Part 75), expressed in thousand of lb/hr of steam;

(b) the load level designated as normal, pursuant to Section 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam; and

(c) the date of the load analysis used to determine the normal load level.

(9) Information related to quality assurance testing, including (as applicable): identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels (percent of span) for the calibration error test and linearity check; calculations for determining maximum potential concentration, maximum expected concentration (if applicable), maximum potential flow rate, and span.

(10) If applicable, apportionment strategies under Sections 75.10 through 75.18 of 40 CFR Part 75.

(11) Description of site locations for each monitoring component in a monitoring system, including schematic diagrams and engineering drawings and any other documentation that demonstrates each monitor location meets the appropriate siting criteria. For units monitored by a continuous

emission monitoring system, diagrams shall include:

(a) a schematic diagram identifying entire gas handling system from unit to stack for all units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in the initial monitoring plan and Paragraphs 1 and 3 of Subsection G of 20.2.81.106 NMAC; the schematic diagram must depict the height of any monitor locations; comprehensive or separate schematic diagrams shall be used to describe groups of units using a common stack; and

(b) stack and duct engineering diagrams showing the dimensions and locations of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks.

(12) A data flow diagram denoting the complete information handling path from output signals of CEMS components to final reports.

H. In addition to supplying the information in Subsections F and G above, the WEB source with an sulfur dioxide emitting unit using either of the methodologies in Subparagraph b of Paragraph 2 of Subsection A of 20.2.81.106 NMAC shall include the following information in its monitoring plan for the specific situations described.

(1) For each gas-fired or oil-fired sulfur dioxide emitting unit for which the WEB source uses the optional protocol in Appendix D to 40 CFR Part 75 for sulfur dioxide mass emissions, the WEB source shall include the following information in the monitoring plan:

(a) parameter monitored;

(b) type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate (i.e., upper range value or unit maximum) for each fuel flowmeter;

(c) test method used to check the accuracy of each fuel flowmeter;

(d) submission status of the data;

(e) monitoring system identification code;

(f) the method used to demonstrate that the unit qualifies for monthly gross calorific value (GCV) sampling or for daily or annual fuel sampling for sulfur content, as applicable;

(g) a schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeter(s), and the stack(s); the schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling location(s); comprehensive and separate schematic diagrams shall be used to describe groups of

units using a common pipe;

(h) for units using the optional default sulfur dioxide emission rate for "pipeline natural gas" or "natural gas" in Appendix D to 40 CFR Part 75, the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either Section 2.3.1.4 or 2.3.2.4 of Appendix D to 40 CFR Part 75;

(i) for units using the 720 hour test under Section 2.3.6 of Appendix D to 40 CFR Part 75 to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(j) for units using the 720 hour test under Section 2.3.5 of Appendix D to 40 CFR Part 75 to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test.

(2) For each sulfur dioxide emitting unit for which the WEB source uses the low mass emission [accepted] excepted methodology of Section 75.19 to 40 CFR Part 75, the WEB source shall include the following information in the monitoring plan that accompanies the initial certification application:

(a) the results of the analysis performed to qualify as a low mass emissions unit under Section 75.19(c) to 40 CFR Part 75; this report shall include either the previous three years actual or projected emissions; the following items shall be included: a) current calendar year of application; b) type of qualification; c) years one, two, and three; d) annual measured, estimated or projected sulfur dioxide mass emissions for years one, two, and three; and e) annual operating hours for years one, two, and three;

(b) a schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeter(s), and the stack(s); comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(c) for units which use the long term fuel flow methodology under Section 75.19(c)(3) to 40 CFR Part 75, a diagram of the fuel flow to each unit or group of units and a detailed description of the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units;

(d) a statement that the unit burns only gaseous fuel(s) and/or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuel(s) and/or fuel oil and a list of the fuels that are projected to be burned;

(e) a statement that the unit meets the applicability requirements in Sections 75.19(a) and (b) to 40 CFR Part 75 with respect to sulfur dioxide emissions; and

(f) any unit historical actual, estimated and projected sulfur dioxide emissions data and calculated sulfur dioxide

emissions data demonstrating that the unit qualifies as a low mass emissions unit under Sections 75.19(a) and (b) to 40 CFR Part 75.

(3) For each gas-fired unit the WEB source shall include the following in the monitoring plan: current calendar year, fuel usage data as specified in the definition of gas-fired in Section 72.2 of 40 CFR Part 72, and an indication of whether the data are actual or projected data.

I. The specific elements of a monitoring plan under Subsection D of 20.2.81.106 NMAC shall not be part of an operating permit for a WEB source issued in accordance with the title V of the Clean Air Act, and modifications to the elements of the plan shall not require a permit modification.

J. Certification and recertification.

(1) All monitoring systems are subject to initial certification and recertification testing as specified in 40 CFR Part 75, 20.2.81.111 NMAC or ; 20.2.81.112 NMAC. Certification or recertification of a monitoring system by the U.S. environmental protection agency for a WEB source that is subject to 40 CFR Part 75 under a requirement separate from 20.2.81 NMAC shall constitute certification under the WEB trading program.

(2) The WEB source with a sulfur dioxide emitting unit not otherwise subject to 40 CFR Part 75 that monitors sulfur dioxide mass emissions in accordance with 40 CFR Part 75 to satisfy the requirements of this section shall perform all of the tests required by that regulation and shall submit the following:

(a) a test notice, not later than 21 days before the certification testing of the monitoring system, provided that the department may establish additional requirements for adjusting test dates after this notice as part of the approval of the initial monitoring plan under Subsection F of 20.2.81.106 NMAC;

(b) an initial certification application within 45 days after testing is complete;

(c) a monitoring system shall be considered provisionally certified while the application is pending, and the system shall be deemed certified if the department does not approve or disapprove the system within six months after the date on which the application is submitted; and

(d) whenever an audit of any monitoring certified under 20.2.81 NMAC, and a review of the initial certification or recertification application, reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement of 20.2.81 NMAC, both at the time of the initial certification or recertification application submission and at the time of the audit, the department will issue

a notice of disapproval of the certification status of such system or component; for the purposes of this paragraph, an audit shall be either a field audit of the facility or an audit of any information submitted to the department regarding the facility; by issuing the notice of disapproval, the certification status is revoked prospectively, and the data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the WEB source completes subsequently approved initial certification or recertification tests in accordance with the procedures in Subsection J of 20.2.81.106 NMAC; the WEB source shall apply the substitute data procedures in Paragraph 2 of Subsection L of 20.2.81.106 NMAC to replace, prospectively, all of the invalid, nonqualityassured data for each disapproved system or component.

K. Ongoing quality assurance and quality control. The WEB source shall satisfy the applicable quality assurance and quality control requirements of Part 75 or, if the WEB source is subject to a WEB protocol in 20.2.81.111 NMAC , the applicable quality assurance and quality control requirements in 20.2.81.111 NMAC on and after the date that certification testing commences.

L. Substitute data procedures.

(1) For any period after certification testing is complete in which quality assured, valid data are not being recorded by a monitoring system certified and operating in accordance with 20.2.81 NMAC, missing or invalid data shall be replaced with substitute data in accordance with 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in 20.2.81.111 NMAC or 20.2.81.112 NMAC , with substitute data in accordance with 20.2.81.111 NMAC.

(2) For a sulfur dioxide emitting unit that does not have a certified or provisionally certified monitoring system in place as of the beginning of the first control period for which the unit is subject to the WEB trading program, the WEB source shall:

(a) if the WEB source will use a CEMS to comply with this section, substitute the maximum potential concentration of sulfur dioxide for the unit and the maximum potential flow rate, as determined in accordance with 40 CFR Part 75; the procedures for conditional data validation under Section 75.20(b)(3) may be used for any monitoring system under 20.2.81 NMAC that uses these 40 CFR Part 75 procedures, as applicable;

(b) if the WEB source will use the 40 CFR Part 75 Appendix D methodology, substitute the maximum potential sulfur content, density or gross calorific value for

the fuel and the maximum potential fuel flow rate, in accordance with Section 2.4 of Appendix D to 40 CFR Part 75;

(c) if the WEB source will use the 40 CFR Part 75 methodology for low mass emissions units, substitute the sulfur dioxide emission factor required for the unit as specified in 40 CFR 75.19 and the maximum rated hourly heat input, as defined in 40 CFR 72.2; or

(d) if using a protocol in 20.2.81.111 NMAC or 20.2.81.112 NMAC, follow the procedures in the applicable protocol.

M. Compliance deadline.

(1) The initial monitoring plan shall be submitted by the following dates.

(a) For each source that is a WEB source on or before the program trigger date, the monitoring plan shall be submitted 180 days after such program trigger date.

(b) For any existing source that becomes a WEB source after the program trigger date, the monitoring plan shall be submitted by September 30 of the year following the inventory year in which the source exceeded the emissions threshold.

(c) For any new WEB source, the monitoring plan shall be included with the permit application under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC.

(2) A detailed monitoring plan under Subsection E of 20.2.81.106 NMAC shall be submitted no later than 45 days prior to commencing certification with the following Paragraph 3.

(3) Emission monitoring systems shall be installed, operational and shall have met all of the certification testing requirements of this 20.2.81.106 NMAC (including any referenced in 20.2.81.111 NMAC or 20.2.81.112 NMAC) by the following dates.

(a) For each source that is a WEB source on or before the program trigger date, two years prior to the start of the first control period as described in 20.2.81.109 NMAC.

(b) For any existing source that becomes a WEB source after the program trigger date, one year after the due date for the monitoring plan under Subparagraph b of Paragraph 2 of Subsection M of 20.2.81.106 NMAC.

(c) For any new WEB source, (or any new unit at a WEB source under Paragraph 3 Subparagraph a or b, the earlier of 90 unit operating days or 180 calendar days after the date the new source commences operation.

(4) The WEB source shall submit test notices and certification applications in accordance with the deadlines set forth in Paragraph 2 of Subsection J of 20.2.81.106 NMAC.

(5) For each applicable control period, the WEB source shall submit each

quarterly report under Subsection O of 20.2.81.106 NMAC by no later than 30 days after the end of each calendar quarter and shall submit the annual report under Subsection O of 20.2.81.106 NMAC no later than 60 days after the end of each calendar year.

N. Recordkeeping.

(1) ~~[Except as provided in Paragraph 2 of Subsection N of 20.2.81.106 NMAC, the]~~ The WEB source shall keep copies of all reports, registration materials, compliance certifications, sulfur dioxide emissions data, quality assurance data, and other submissions under 20.2.81 NMAC for a period of five years. In addition, the WEB source shall keep a copy of all account certificates of representation. Unless otherwise requested by the WEB source and approved by the department, the copies shall be kept on site at the source.

(2) The WEB source shall keep records of all operating hours, quality assurance activities, fuel sampling measurements, hourly averages for sulfur dioxide, stack flow, fuel flow, or other continuous measurements, as applicable, and any other applicable data elements specified in this section, 20.2.81.111 NMAC or in 20.2.81.112 NMAC. The WEB source shall maintain the applicable records specified in 40 CFR Part 75 for any sulfur dioxide emitting unit that uses a Part 75 monitoring method to meet the requirements of this section.

O. Reporting.

(1) Quarterly reports. For each sulfur dioxide emitting unit, the account representative shall submit a quarterly report within thirty days after the end of each calendar quarter. The report shall be in a format specified by the department to include hourly and quality assurance activity information and shall be submitted in a manner compatible with the emissions tracking database designed for the WEB trading program. If the WEB source submits a quarterly report under 40 CFR Part 75 to the U.S. EPA administrator, no additional report under this paragraph shall be required, provided, however, that the department may require that a copy of that report (or a separate statement of quarterly and cumulative annual sulfur dioxide mass emissions) be submitted separately to the department.

(2) Annual report. Based on the quarterly reports, each WEB source shall submit an annual statement of total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source. The annual report shall identify the total emissions for all units monitored in accordance with Subsection A of 20.2.81.106 NMAC and the total emissions for all units with emissions estimated in accordance with Subsection B of 20.2.81.106 NMAC. The annual report

shall be submitted within 60 days after the end of a control period.

(3) If the department so directs that any monitoring plan, report, certification, recertification, or emissions data required to be submitted under this section be submitted to the tracking system administrator.

(4) The department may review and reject any report submitted under this Subsection O of 20.2.81.106 NMAC that contains errors or fails to satisfy the requirements of this section, and the account representative shall resubmit the report to correct any deficiencies.

(5) A WEB source may petition for an alternative to any requirement specified in Paragraph 2 of Subsection A of 20.2.81.106 NMAC. The petition shall require approval of the department and the U.S. EPA administrator. Any petition submitted under this paragraph shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(a) identification of the WEB source and applicable sulfur dioxide emitting unit(s);

(b) a detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(c) a description and diagram of any equipment and procedures used in the proposed alternative, if applicable;

(d) a demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and is consistent with the purposes of 20.2.81 NMAC and that any adverse effect of approving such alternative will be de minimis; and

(e) any other relevant information that the department may require.

(6) For any monitoring plans, reports, or other information submitted under 20.2.81.106 NMAC, the WEB source shall ensure that, where applicable, identifying information is consistent with the identifying information provided in the most recent certificate of representation for the WEB source submitted under 20.2.81.102 NMAC.

[20.2.81.106 NMAC - N, 12/31/03; A, 07/06/11]

20.2.81.108 USE OF ALLOWANCES FROM A PREVIOUS YEAR:

A. Any allowance that is held in a compliance account or general account shall remain in such an account unless and until the allowance is deducted in conjunction with the compliance process, or transferred to another account.

B. In order to demonstrate compliance under Subsection A of 20.2.81.109 NMAC for a control period, WEB sources shall only use allowances

allocated for that current control period or any previous year. Because all allowances held in a special reserve compliance account for a WEB source that monitors certain units in accordance with Subsection B of 20.2.81.106 NMAC will be deducted for compliance for each control period, no banking of such allowances for use in a subsequent year is permitted by 20.2.81 NMAC.

C. If flow control procedures for the current control period have been triggered as outlined in section C4.2 of the sulfur dioxide milestones and backstop trading program implementation plan, then the use of allowances that were allocated for any previous year shall be limited as follows.

(1) The number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year shall be determined.

(2) The number determined in Paragraph 1 shall be multiplied by the flow control ratio established in accordance with section C4.2 of the sulfur dioxide milestones and backstop trading program implementation plan to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period.

(3) Allowances that were allocated for a previous year in excess of the number determined in ~~(2)~~ Paragraph 2 may also be used for the current control period. If such allowances are used to make a deduction, ~~two~~ three allowances shall be deducted for each deduction of one allowance required under 20.2.81.109 NMAC.

D. Special provisions for the year 2018. After compliance with the 2017 allowance limitation has been determined in accordance with Subsection A of 20.2.81.109 NMAC, allowances allocated for any year prior to 2018 shall not be used for determining compliance with the 2018 allowance limitation or any future allowance limitation.

[20.2.81.108 NMAC - N, 12/31/03; A, 07/06/11]

20.2.81.109 COMPLIANCE:

A. Compliance with allowance limitations.

(1) The WEB source shall hold allowances, in accordance with Paragraph 2 of Subsection A of 20.2.81.109 NMAC and 20.2.81.108 NMAC, as of the allowance transfer deadline in the WEB source's compliance account (together with any current control year allowances held ~~for~~ in the WEB ~~[source by the department]~~ source's special reserve compliance account under Subsection B of 20.2.81.106 NMAC in an amount not less than the total sulfur

dioxide emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of 20.2.81.106 NMAC.

(a) For each source that is a WEB source on or before the program trigger date, the first control period is the calendar year that is six years following the calendar year for which sulfur dioxide emissions exceeded the milestone in accordance with procedures in section A of the sulfur dioxide milestones and backstop trading program implementation plan.

(b) For any existing source that becomes a WEB source after the program trigger date, the first control period is the calendar year that is four years following the inventory year in which the source exceeded the sulfur dioxide emissions threshold.

(c) For any new WEB source after the program trigger date the first control period is the first full calendar year that the source is in operation.

(d) If the WEB trading program is triggered in accordance with the 2013 review procedures in section A4 of the sulfur dioxide milestones and backstop trading program implementation plan, the first control period for each source that is a WEB source on or before the program trigger date is the year 2018.

(2) Allowance transfer deadline. An allowance may only be deducted from the WEB source's compliance account if:

(a) the allowance was allocated for the current control period or meets the requirements in 20.2.81.108 NMAC for use of allowances from a previous control period; and

(b) the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or was transferred into the compliance account by an allowance transfer correctly submitted for recording by the allowance transfer deadline for the current control period.

(3) Compliance with allowance limitations shall be determined as follows.

(a) The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under Subsection B of 20.2.81.106 NMAC, as reported by the source in Paragraph 2 or 4 of Subsection O of 20.2.81.106 NMAC, and recorded in the emissions tracking database shall be compared to the allowances held in the source's special reserve compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with 20.2.81.108 NMAC. If the emissions are equal to or less than the allowances in such account, all such allowances shall be retired to satisfy the obligation to hold allowances for such emissions. If the total emissions from such units exceeds the allowances in such special

reserve account, the WEB source shall account for such excess emissions in [the following] Subparagraph b of this paragraph.

(b) The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under Subsection A of 20.2.81.106 NMAC, as reported by the source in Paragraph 2 or 4 of Subsection O of 20.2.81.106 NMAC, and recorded in the emissions tracking database, together with any excess emissions as calculated in the preceding Subparagraph a, shall be compared to the allowances held in the source's compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with 20.2.81.108 NMAC.

(c) If the comparison in Subparagraph b of this paragraph results in emissions that exceed the allowances held in the source's compliance account, the source has exceeded its allowance limitation and the excess emissions are subject to the allowance deduction penalty in Subsection C of this section.

(4) Other than allowances in a special reserve compliance account for units monitored under Subsection B of 20.2.81.106 NMAC, to the extent consistent with 20.2.81.108 NMAC, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's account representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account. The allowances held in a special reserve compliance account pursuant to Subsection B of 20.2.81.106 NMAC shall be deducted as specified in Subparagraph a of Paragraph 3 of Subsection A of 20.2.81.109 NMAC.

B. Certification of compliance.

(1) For each control period in which a WEB source is subject to the allowance limitation, the account representative of the source shall submit to the department a compliance certification report for the source.

(2) The compliance certification report shall be submitted no later than the allowance transfer deadline of each control period, and shall contain the following:

(a) identification of each WEB source;

(b) at the account representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account for compliance with the

allowance limitation; and

(c) the compliance certification report according to Paragraph 3 of this section.

(3) In the compliance certification report, the account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB trading program, whether the WEB source for which the compliance certification is submitted was operated during the control period covered by the report in compliance with the requirements of the WEB trading program applicable to the source including:

(a) whether the WEB source operated in compliance with the sulfur dioxide allowance limitation;

(b) whether sulfur dioxide emissions data has been submitted to the department in accordance with Subsection A of 20.2.81.106 NMAC and other applicable guidance, for review, revision as necessary, and finalization for forwarding to the sulfur dioxide allowance tracking system for recording;

(c) whether the monitoring plan that governs the WEB source has been maintained to reflect the actual operation and monitoring of the source, and contains all information necessary to attribute sulfur dioxide emissions to the source, in accordance with Subsection A of 20.2.81.106 NMAC;

(d) whether all the sulfur dioxide emissions from the WEB source if applicable, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures;

(e) if applicable, whether any sulfur dioxide emitting unit for which the WEB source is not required to monitor in accordance with Paragraph 3 of Subsection A of 20.2.81.106 NMAC remained permanently retired and had no emissions for the entire applicable period; and

(f) whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification; if there were any such changes, the report shall specify the nature, reason, and date of the change, the method to determine compliance status subsequent to the change, and specifically, the method to determine sulfur dioxide emissions.

C. [Penalties] Allowance deduction penalty for any WEB source exceeding its allowance limitations.

(1) [Allowance deduction penalties.

(a) If emissions from a WEB source exceed the allowance limitation for a control period, as determined in accordance with Subsection A of 20.2.81.109 NMAC, the source's allowance held in its compliance

account will be reduced by an amount equal to ~~[two]~~ three times the source's tons of excess emissions. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances shall be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

~~[(b)]~~ (2) Any allowance deduction required under this section shall not affect the liability of the owners and operators of the WEB source for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act, implementing regulations or applicable state or tribal law. Accordingly, a violation can be assessed each day of the control period for each ton of sulfur dioxide emissions in excess of its allowance limitation if the department so chooses.

~~[(2) Financial penalties.—A financial penalty of \$5,000 per ton of sulfur dioxide emissions in excess of the WEB source's allowance limitation shall be levied. Each ton represents a separate violation.]~~

D. Liability.

(1) WEB source liability for non-compliance. Separate and regardless of any ~~[automatic penalties assessed for]~~ allowance deduction penalty ~~[and financial penalty]~~, a WEB source that violates any requirement of 20.2.81 NMAC is subject to civil and criminal penalties under the Air Quality Control Act and the Clean Air Act. Each day of the control period is a separate violation, and each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation.

(2) General liability.

(a) Any provision of the WEB trading program that applies to a source or an account representative shall apply also to the owners and operators of such source.

(b) Any person who violates any requirement or prohibition of the WEB trading program shall be subject to enforcement pursuant to applicable state, tribal or federal law.

(c) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB trading program shall be subject to criminal enforcement pursuant to the applicable state, tribal or federal law.

[20.2.81.109 NMAC - N, 12/31/03; A, 07/06/11]

20.2.81.110 SPECIAL PENALTY PROVISIONS FOR ~~[YEAR]~~ THE 2018 MILESTONE:

A. If the WEB trading program is triggered as outlined in section A of the sulfur dioxide milestones and backstop trading program implementation plan, and

the first control period will not occur until after the year 2018, the following provisions shall apply for the 2018 emissions year.

(1) All WEB sources shall register, and open a compliance account within 180 days after the program trigger date, in accordance with Subsection A of 20.2.81.103 NMAC and 20.2.81.105 NMAC.

(2) The tracking system administrator shall record the allowances for the 2018 control period for each WEB source in the source's compliance account once the department allocates the 2018 allowances under section C1 and D1 of the sulfur dioxide milestones and backstop trading program implementation plan.

(3) The allowance transfer deadline is midnight Pacific standard time on May ~~[30]~~ 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter). WEB sources may transfer allowances as provided in Subsection A of 20.2.81.107 NMAC until the allowance transfer deadline. For each control period after 2018 that the special penalty provisions are assessed, the dates for the 2019 control period will be adjusted forward by one year.

(4) A WEB source shall hold allowances allocated for 2018 including those transferred into the compliance account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total sulfur dioxide emissions for 2018. Emissions shall be determined using the pre-trigger monitoring provisions in section B of the sulfur dioxide milestones and backstop trading program implementation plan, and 20.2.73 NMAC.

(5) ~~[An allowance deduction penalty and financial penalty shall be assessed and levied in accordance with Subsection D of 20.2.8.108 NMAC; Paragraph 4 of Subsection A of 20.2.81.109 NMAC and Subsection C of 20.2.81.109 NMAC except that sulfur dioxide emissions shall be determined under Paragraph 4 of Subsection A of 20.2.81.110 NMAC.]~~ In accordance with Subsection D of 20.2.81.108 NMAC and Paragraph 4 of Subsection A of 20.2.81.110 NMAC, the department shall seek at least the minimum financial penalty of \$5,000 per ton of sulfur dioxide emissions in excess of the WEB source's allowance limitation.

(a) Any source may resolve its excess emissions violation by agreeing to a streamline settlement approach where the source pays a penalty of \$5,000 per ton or partial ton of excess emissions, and payment is received within 90 calendar days after the issuance of a notice of violation.

(b) Any source that does not resolve its excess emissions violation in accordance with the streamlined settlement approach in Subparagraph a of this paragraph will be subject to civil enforcement action, in

which the department shall seek a financial penalty for the excess emissions based on the state's statutory maximum civil penalties.

(6) Each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation and each day of a control period is a separate violation.

B. The provisions in 20.2.81.110 NMAC shall continue to apply for each year after the 2018 emission year until:

(1) the first control period under the WEB trading program under Paragraph 1 of Subsection A of 20.2.81.109 NMAC; or

(2) the department ~~[determined]~~ determines, in accordance with section A3.10 of the implementation plan, that the 2018 sulfur dioxide milestone has been met.

C. If 20.2.81.110 NMAC was implemented, the following shall apply to each emissions year after the 2018 emissions year.

(1) The tracking system administrator will record the allowances for the control period for the specific year for each WEB source in the source's compliance account once the department allocates the allowances under section C1 of the sulfur dioxide milestones and backstop trading program implementation plan.

(2) ~~[The allowance transfer deadline is midnight Pacific standard time on March 1 of each year (or if this date is not a business day, midnight of the first business day thereafter) following the end of the specific emissions year. WEB sources may transfer allowances as provided in Subsection A of 20.2.81.107 NMAC until the allowance transfer deadline.]~~ The allowance transfer deadline for the 2019 emissions year shall be midnight Pacific standard time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter); and for each control period after 2018 that the special penalty provisions are assessed, the May 31, 2021 allowance transfer deadline for the 2019 control period will be adjusted forward by one year.

(3) A WEB source must hold allowances allocated for that specific emissions year, or any year after 2018, including those transferred into the compliance account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total sulfur dioxide emissions for the specific emissions year. Emissions are determined using the pre-trigger monitoring provisions in section B of the sulfur dioxide milestones and backstop trading program implementation plan, and 20.2.73 NMAC.

(4) An allowance deduction penalty and financial penalty shall be assessed and levied in accordance with Subsection D of 20.2.81.108 NMAC, Paragraph 4 of Subsection A of 20.2.81.109 NMAC, and Subsection C of 20.2.81.109

NMAC, except that sulfur dioxide emissions shall be determined under Paragraph 3 of Subsection C of 20.2.81.110 NMAC.

[20.2.81.110 NMAC - N, 12/31/03; A, 07/06/11]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

Explanatory paragraph: This is an amendment to 20.9.2 NMAC, Sections 7 and 10, effective July 30, 2011. The amendments to Subsection A of 20.9.2.7 NMAC include the addition of the definition of “antineoplastic drug” at Paragraph (7), and a renumbering of Paragraphs (8) through (11). The amendments to Subsection D of 20.9.2.7 NMAC include the addition of the definition of “dangerous drug” at Paragraph (1), the addition of the definition of “drug” at Paragraph (8), the addition of the definition of “drug enforcement administration” at Paragraph (9) and a general renumbering of the Subsection. The amendments to Subsection H of 20.9.2.7 NMAC include the addition of the definition of “household pharmaceutical waste” at Paragraph (5), and the renumbering of the definition of “household waste” to Paragraph (6). The amendments to Subsection L of 20.9.2.7 NMAC include the addition of the definition of “law enforcement pharmaceutical take-back program” at Paragraph (3), the addition of the definition of “law enforcement pharmaceutical incinerator” at Paragraph (4) and a renumbering of Paragraphs (5) through (11). The amendments to Subsection P of 20.9.2.7 NMAC include the addition of the definition of “pharmacist” to Paragraph (4), and a renumbering of Paragraphs (5) through (10). The amendments to Subsection R of 20.9.2.7 NMAC include the replacement of the term “rules” for “regulations” in Subparagraph (g) of Paragraph (1) and in Subparagraph (b) of Paragraph (6). The amendment to Subsection S of 20.9.2.7 NMAC include adding language to Subparagraph (d) of Paragraph (13) that excludes from the definition of special waste ash produced from law enforcement pharmaceutical incinerators from the incineration of household pharmaceutical waste, and the replacement of the term “rules” for “regulations” in Paragraph (15). Subsection T of 20.9.2.7 NMAC excludes law enforcement pharmaceutical incinerators from the definition of “transformation facility” in Paragraph (4). There are no other changes to Section 7.

20.9.2.7 DEFINITIONS.

Whenever a term used in 20.9.2 - 20.9.10 NMAC is defined in the Solid Waste Act, the term shall have the meaning given in the Solid Waste Act, unless otherwise defined in this part.

A. Terms starting with the letter ‘A’ are defined as follows.

(1) “Act” means the Solid Waste Act, NMSA 1978, Sections 74-9-1, et seq.

(2) “Active life” means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with 20.9.6 NMAC.

(3) “Active portion” means that part of a facility that has received or is receiving wastes and that has not been closed in accordance with 20.9.6 NMAC.

(4) “Air curtain incinerator” means an incineration facility used for burning yard refuse that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs, controls emission of the combustion products, is not designed to burn more than ten tons of yard refuse per hour, and has obtained an air quality permit or registration.

(5) “Airport” means public use airports open to the public without prior permission and without restrictions within the physical capacities of available facilities, but does not include aero-club airports operated on a military installation.

(6) “Alluvial fan” means a low, outspread, relatively flat to gentle sloping mass of loose sediment, shaped like an open fan or a segment of a cone, deposited by a stream at a place where it issues from a narrow mountain valley upon a plain or broad valley.

(7) “Antineoplastic drug” means cancer chemotherapy drugs previously called cytotoxics or anti-cancer drugs that have the ability to kill or stop growth in living cells.

[(7)] (8) “Aquifer” means a geologic formation, group of formations, or portions of a formation capable of yielding ground water to wells or springs. The uppermost aquifer is the aquifer nearest the natural ground surface including lower aquifers that are hydraulically interconnected with this aquifer.

[(8)] (9) “Areas susceptible to mass movement” means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or man-induced events, results in the down slope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, solifluction, block sliding, and rock fall.

[(9)] (10) “Asbestos waste” means a solid waste that contains more than 1 percent asbestos:

(a) “friable asbestos material” means any material containing more than 1 percent asbestos, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure;

(b) “category I non-friable asbestos containing material” means asbestos containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos;

(c) “category II non-friable asbestos containing material” means any material, excluding category I non-friable asbestos containing material, containing more than one percent asbestos, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand; and

(d) “regulated asbestos waste” means friable asbestos material; category I non-friable asbestos containing material that has become friable; category I non-friable asbestos containing material that will be or has been subjected to sanding, grinding, cutting or abrading; or category II non-friable asbestos containing material that has a high probability of becoming or has become broken, crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of excavation, renovation, demolition, storage, transportation, or while exposed during disposal operations.

[(10)] (11) “Ash” means the ash that results from the incineration or transformation of solid waste at a power generating facility or solid waste facility and includes both fly ash and bottom ash, and ash from the incineration of densified-refuse-derived fuel and refuse-derived fuel, but does not include residue from structure fires, fireplaces, air curtain incinerators, or small animal crematoria or ash generated by the combustion of yard waste for energy production, or fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion.

D. Terms starting with the letter ‘D’ are defined as follows.

(1) “Dangerous drug” also known as a “prescription drug” means a drug other than a controlled substance enumerated in schedule I of the Controlled Substance Act, that because of potentiality for harmful effect or the method of its use or the

collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use (directions under which the layman can use a drug or device safely and for the purposes for which intended) cannot be prepared.

[(4)] (2) "Department" means the New Mexico environment department.

[(2)] (3) "Discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or ground water.

[(3)] (4) "Disease vectors" means any rodents, flies, mosquitoes, or other animals and insects, capable of transmitting disease to humans.

[(4)] (5) "Displacement of a fault" means the relative movement of any two sides of a fault fracture measured in any direction.

[(5)] (6) "Dispose or disposal" means causing, allowing, or maintaining the abandonment, discharge, deposit, placement, injection, dumping, burning, spilling, or leaking of any solid waste into or on any land or water.

[(6)] (7) "Distillation" means a process by which components in a chemical mixture are purified or separated by the application and removal of heat and the separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(8) "Drug" means articles:

(a) recognized as drugs in any official compendium or supplement thereto, designated from time to time by the New Mexico board of pharmacy for the use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(b) intended for use in the diagnosis, cure mitigation, treatment or prevention of disease in humans or other animals;

(c) other than food, intended to affect the structure or any function of the body of humans or other animals; or

(d) intended for use as a component of any articles specified in Paragraphs (1), (2), (3) or (4) of Subsection N of 16.19.8.7 NMAC.

(9) "Drug enforcement administration" means the drug enforcement administration of the United States department of justice.

H. Terms starting with the letter 'H' are defined as follows.

(1) "Hauler" means any person transporting solid waste.

(2) "Hazardous constituent" means any constituent listed in 40 CFR

258 Appendix I or II or Subsection A of 20.6.2.3103 NMAC, and any potential toxic pollutant listed in 20.6.2.7 NMAC.

(3) "Hazardous waste" means a hazardous waste as defined in 40 CFR 261.3.

(4) "Hot waste" means any waste which is on fire or smoldering when delivered to the solid waste facility.

(5) "Household pharmaceutical waste" means solid waste consisting of unused or expired drugs or dangerous drugs.

[(5)] (6) "Household waste" means any solid waste including garbage and trash, derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

L. Terms starting with the letter 'L' are defined as follows.

(1) "Landfill" means a solid waste facility that receives solid waste for disposal and includes the following categories and classifications:

(a) "category 1 landfill" means a landfill that closed between April 11, 1974 and May 14, 1989;

(b) "category 2 landfill" means a landfill that stopped receiving waste between May 14, 1989, and October 9, 1993

(c) "category 3 landfill" means a landfill that began operations before October 9, 1993 and continued to operate after October 9, 1993;

(d) "category 4 landfill" means a landfill that began operations after October 9, 1993;

(e) "category 5 landfill" means a landfill that began operations after the effective date of these [regulations] rules;

(f) "municipal landfill";

(g) "construction and demolition landfill";

(h) "special waste landfill"; and

(i) "monofill."

(2) "Lateral expansion" means a horizontal expansion of the permitted waste boundaries of a landfill.

(3) "Law enforcement household pharmaceutical take-back program" means a service or limited-duration event sponsored by a law enforcement agency, state, municipality, county or cooperative association that collects and properly disposes of household pharmaceutical waste for which the presence of law enforcement personnel is required.

(4) "Law enforcement pharmaceutical incinerator" means a stationary or mobile incinerator that meets the requirements of the solid waste rules, is owned or operated by a law enforcement agency and is used to destroy household pharmaceutical waste collected during a law enforcement household pharmaceutical take-back program.

[(3)] (5) "Leachate" means the

liquid that has passed through, or emerged from solid waste and contains soluble, suspended, or miscible materials removed from that solid waste.

[(4)] (6) "Lift" means an accumulation of solid waste which is compacted into a cell and over which compacted cover is placed.

[(5)] (7) "Liner" means a continuous layer constructed of natural or man-made materials beneath and on the sides of a surface impoundment, landfill, or landfill cell that restricts the downward and lateral movement of solid waste, gases or leachate.

[(6)] (8) "Liquid waste" means any waste material that is determined to contain free liquids, defined by the Paint Filter Liquids Test, described in "Test Methods for Evaluating Solid Waste" referenced in Paragraph (5) of Subsection C of 20.9.8.11 NMAC.

[(7)] (9) "Lithified earth material" means all rock, including metamorphic, igneous, and sedimentary.

[(8)] (10) "Locked facility" means any solid waste facility which has permanently stopped receiving solid waste, but has not yet met the requirements of 20.9.6 NMAC.

[(9)] (11) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees C and atmospheric pressure.

P. Terms starting with the letter 'P' are defined as follows.

(1) "Permitted waste boundary" means the outside boundary of the proposed cells over the expected life of a landfill as specified in the permit or registration.

(2) "Person" means any individual, partnership, company, corporation, firm, association, trust, estate, state or federal agency, government instrumentality or agency, institution, county, city, town, village, or municipal authority, or other legal entity however organized.

(3) "Petroleum waste" means those liquids and sludges that are accumulated as a result of exploration or production activities regulated under the New Mexico Oil and Gas Act.

(4) "Pharmacist" means a person duly licensed by the New Mexico board of pharmacy to engage in the practice of pharmacy pursuant to the Pharmacy Act, NMSA 1978, Section 61-11-1.

[(4)] (5) "Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a landfill.

[(5)] (6) "Practical quantitation limit" or "PQL" means the lowest concentration of analytes in ground

waters that can be reliably determined within specified limits of precision and accuracy under routine laboratory operating conditions.

[(6)] (7) "Processing" means techniques to change the physical, chemical, biological, or pathological character or composition of solid waste, but does not include composting, transformation, grinding or chipping of yard refuse, compaction, or incineration.

[(7)] (8) "Processing facility" means a facility where processing of solid waste occurs.

[(8)] (9) "Putrescible" means organic material subject to decomposition by microorganisms.

[(9)] (10) "Pyrolysis" means the process whereby solid waste is thermally decomposed in an oxygen-deficient atmosphere.

R. Terms starting with the letter 'R' are defined as follows.

(1) "Radioactive waste" means:

(a) high-level radioactive waste or spent nuclear fuel as defined in Section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

(b) transuranic waste as defined in Section 11(ee) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(ee);

(c) waste source material as defined in Section 11(z) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(z);

(d) waste special nuclear material as defined in Section 11(aa) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(aa);

(e) waste by-product material as defined in Section 11e of the Atomic Energy Act of 1954, 42 U.S.C. 2014(e);

(f) material the nuclear regulatory commission, consistent with existing law, classifies as low level radioactive waste; and

(g) waste radioactive material that requires licensure in accordance with the New Mexico radiation protection [regulations] rules, 20.3.3 NMAC.

(6) "Regulated facility" means a facility that is:

(a) a solid waste facility permitted to construct, operate, or close pursuant to the Solid Waste Act, NMSA 1978, Sections 74-9-1, et. seq. and 20.9.2 - 20.9.10 NMAC, or pursuant to the laws or regulations of a neighboring state;

(b) a hazardous waste facility authorized to operate pursuant to interim status or permitted to construct, operate, or close pursuant to the Hazardous Waste Act, NMSA 1978, Sections 74-4-1, et. seq. and the New Mexico hazardous waste management [regulations] rules, 20.4.1 NMAC, or pursuant to the laws or regulations of a neighboring state, including all units or areas subject to corrective action requirements under the facility permit or order;

(c) a site listed on the National

Priorities List pursuant 42 U.S.C. 9605 or a federal facility required to take response or remedial action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, et. seq.;

(d) a facility that has, or is required to obtain a Title V air quality permit, 42 U.S.C. 7661 et seq. and 20.7.2.70 NMAC.

S. Terms starting with the letter 'S' are defined as follows.

(13) "Special waste" means solid waste that has unique handling, transportation, or disposal requirements to assure protection of the environment and the public health, welfare and safety, including:

(a) treated formerly characteristic hazardous wastes (TFCH);

(b) packing house and killing plant offal;

(c) regulated asbestos waste;

(d) ash, except ash produced by a law enforcement pharmaceutical incinerator from the incineration of household pharmaceutical waste;

(e) infectious waste;

(f) sludge, except; sludge that is land applied under 40 CFR Part 503 as intermediate or final cover at a landfill and meets the requirements of Subpart B of 40 CFR Part 503;

(g) industrial solid waste that, unless specially handled or disposed, may harm the environment or endanger the public health or safety;

(h) spill of a chemical substance or commercial product that, unless specially handled or disposed, may harm the environment or endanger the public health or safety; and

(i) petroleum contaminated soils, that have a sum of benzene, toluene, ethylbenzene, and xylene isomer concentrations of greater than 50 mg/kg, or benzene individually greater than 10 mg/kg, or a total petroleum hydrocarbon concentration of greater than 100 mg/kg.

(15) "Stabilized" means, for composting, that the biological decomposition of the wastes has ceased or diminished to a level such that decomposition no longer poses a health, odor, or safety hazard and does not violate any provisions of these or other applicable [regulations] rules.

T. Terms starting with the letter 'T' are defined as follows.

(1) "Tire-derived fuel" means a fuel product derived from scrap tires that is suitable for efficient combustion.

(2) "Transfer" means the handling and storage of solid waste for reshipment, resale, or disposal, or for waste reduction or resource conservation.

(3) "Transfer station" means a facility managed for the collection and accumulation of solid waste with an

operational rate of greater than 240 cubic yards per day monthly average.

(4) "Transformation facility" means a facility used for the transformation of solid waste, but does not include air curtain incinerators or small animal crematoria, and law enforcement pharmaceutical incinerators.

[20.9.2.7 NMAC - Rp, 20 NMAC 9.1.I.105, 08/02/07; A, 07/30/11]

20.9.2.10 PROHIBITED ACTS.

A. In addition to the prohibited acts identified in Section 74-9-31(A) and Section 74-13-4(J), and subject to the exemptions in Section 74-9-31(B) of the Solid Waste Act, no person shall:

(1) store, process, or dispose of solid waste except by means approved by the secretary and in accordance with board [regulations] rules;

(2) dispose of any solid waste in this state in a manner that the person knows or should know will harm the environment or endangers the public health, welfare or safety;

(3) dispose of any solid waste in a place other than a solid waste facility that meets the requirements of 20.9.2 - 20.9.10 NMAC;

(4) dispose of any solid waste, including special waste, in a solid waste facility when that facility's permit does not authorize the disposal of the particular type of solid waste in that facility;

(5) construct, operate, modify or close a solid waste facility unless the facility has approval under 20.9.2 - 20.9.10 NMAC from the department for the described action;

(6) modify permit conditions or modify a solid waste facility unless the facility has applied for and received permission from the secretary for the modification pursuant to 20.1.4 NMAC Permit Procedures - Environment Department;

(7) dispose of petroleum waste, sludge which that does not meet the analytical criteria of 20.9.8.16 NMAC, septage, domestic sewage, or treated domestic sewage at any solid waste facility;

(8) dispose of hazardous wastes which are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act, 42 USC 6901 et seq, at any solid waste facility, unless the facility is permitted for the disposal of hazardous wastes;

(9) dispose of liquid waste at any landfill unless:

(a) the liquid waste is household waste other than septic waste and is in a small container similar in size to that normally found in household waste and the container is designed to hold liquids for use other than storage;

(b) the liquid waste is leachate or landfill gas condensate generated on-site

which is recirculated in accordance with applicable laws and ~~regulations~~ rules; or

(c) the liquid waste is managed in accordance with an approval issued by the secretary;

(d) the use of uncontaminated water for dust control or to improve vegetation on a final or intermediate cover is not considered disposal;

(10) process, recycle, transfer, transform, or dispose of radioactive waste in a solid waste facility;

(11) dispose of lead-acid batteries at any landfill or incinerator;

(12) dispose of any infectious waste in a landfill;

(13) dispose of any material regulated under the federal Toxic Substances Control Act, 15 U.S.C. Sections 2601-2692, except in a solid waste facility, registered facility or operation authorized to accept such waste;

(14) allow open burning at a solid waste facility;

(15) excavate or trench a closed cell or solid waste disposal area without written approval by the department and a determination whether an excavation plan will be required, unless in response to an emergency situation; excavation and trenching do not include excavations or trenches of less than 120 cubic yards or exploratory borings for the purpose of waste characterization, site investigation or mapping, nor does it include removal of waste for routine maintenance on gas collection and control and venting systems;

(16) violate a term or condition of a closure and post-closure care plan, a registration, or conditions contained in an approval of the department under 20.9.2.17 NMAC;

(17) allow liquid extraction from sludge at a solid waste facility unless authorized by permit; or

(18) process, transfer, store, dispose, or allow the disposal of special waste at a collection center;

(19) dispose at a solid waste facility any type of non-hazardous material that is excluded from the definition of solid waste, unless permitted to do so, except that a landfill may dispose of non-hazardous excluded waste listed under the following subparagraphs of Paragraph (9) of Subsection S of 20.9.2.7 NMAC unless prohibited from doing so in its permit; Subparagraphs (d) (agricultural), (f) (sand and gravel), (i) (densified refuse derived fuel), (m) (scrap tires), (n) (recyclable materials), (o) (compost), and (p) (materials, other than those that are regulated as hazardous, toxic or special waste, that are retained as evidence in a criminal proceeding and that are required to be destroyed or managed in accordance with a court or administrative order, and ash derived from such materials).

B. Any person who generates, stores, processes, transports or disposes of solid waste shall take reasonable measures to determine the characteristics of the waste being handled to assure that no prohibited act is being performed.

C. A Subtitle C facility authorized to accept special waste for disposal may accept solid waste if allowed under its permit.

D. Nothing in this section shall prohibit a person for whom a drug or dangerous drug has been dispensed in accordance with a valid prescription from transferring the drug or dangerous drug to a law enforcement agency that collects, stores, transports, or disposes of drugs or dangerous drugs pursuant to a program in compliance with applicable state or federal law or a law enforcement household pharmaceutical take-back program that complies with the solid waste rules.

E. Household pharmaceutical waste collected through a law enforcement household pharmaceutical take-back program may only be disposed of or incinerated in accordance with the solid waste rules.

[20.9.2.10 NMAC - Rp, 20 NMAC 9.1.I.107, 08/02/07; A, 07/30/11]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.9.3 NMAC, Sections 27, 28 and 29 and a repeal of Section 30 with a replacement of new Section 30, effective July 30, 2011.

20.9.3.27 REGISTRATION OF RECYCLING AND COMPOSTING FACILITIES THAT ACCEPT ONLY SOURCE SEPARATED RECYCLABLE OR COMPOSTABLE MATERIALS, COLLECTION CENTERS AND AIR CURTAIN INCINERATORS AND LAW ENFORCEMENT PHARMACEUTICAL INCINERATORS.

A. The owner or operator of the following facilities shall file an application for a registration at least 30 days prior to any operations and every five years thereafter. Existing facilities of the type listed below shall apply for a registration at least 30 days prior to the expiration of their existing permit or registration, or within two years after the effective date of these regulations, whichever occurs first. Facilities covered by this section that do not timely file a complete application for registration are hereby deemed unpermitted solid waste facilities, and the owner or operator may be subject to penalties, permit requirements and nuisance abatement orders. Facilities

required to register are:

(1) recycling facilities that accept only source separated recyclable materials;

(2) composting facilities that accept only source separated compostable materials;

(3) collection centers;

(4) small animal crematoria; ~~and~~

(5) air curtain incinerators; ~~and~~

(6) law enforcement pharmaceutical incinerators.

B. Registration is not required for a recycling facility that accepts only source separated recyclable materials and accepts the recyclables for less than seven days in any calendar year.

C. Registration is not required for collection facilities that are part of a commercial hauler operation, that have an operational rate of less than 240 cubic yards per day monthly average, and that do not serve the general public, but such facilities shall be included in the registration of the commercial hauler under Paragraph (10) of Subsection A of 20.9.3.31 NMAC.

D. Any person who is required to register under this section with the department shall provide the following information:

(1) the name, address, and telephone number of the business, owner, operator and contact person;

(2) the anticipated start up date (unless it is an existing operation);

(3) a legal description, and map of the proposed facility site, including land use and zoning of the site and surrounding area, including setbacks;

(4) a description of means that will be used to prevent the facility from becoming a public nuisance, including:

(a) signs to indicate the location of the site, the hours of operation, emergency telephone numbers, delivery instructions, and that fires and scavenging are prohibited;

(b) storage containers that are leak-proof and manufactured of non-biodegradable material;

(c) means to control litter and prevent and extinguish fires;

(d) conducting any recycling operations in a safe and sanitary manner;

(e) storing any recyclable materials in a manner that does not create a nuisance, harbor vectors, or create a public health hazard;

(f) providing sufficient unloading areas to meet peak demands;

(g) for collection centers, providing separate storage areas for bulky wastes, such as brush, white goods, appliances and scrap tires, and removing the bulky wastes at a frequency approved in the registration;

(h) for collection centers, confining unloading of solid waste to as small an area as possible;

(i) for collection centers, removal

of solid waste from the center at the end of the operating day unless otherwise approved in the registration;

(j) a means of controlling access to the facility;

(k) a means of controlling and mitigating noise and odors;

(l) operating plans for the facility, including, but not limited to, the origin, expected composition and weight or volume of materials to be composted or recycled or incinerated, the process, loading rate, proposed capacity, size and operational rate, and the expected disposition rate of the recyclables, compost, ash or waste from the facility;

(m) for composting facilities that accept sewage sludge, a plan showing testing methods and procedures for compliance with 40 CFR 503 and 20.6.2 NMAC;

(n) for composting facilities, a demonstration that a groundwater discharge permit has been applied for, if applicable;

(o) for air curtain incinerators, a copy of the air quality permit, registration or notice of intent filed with the air quality bureau;

(p) for air curtain incinerators, a designation of the intended recipient of ash waste; and

(q) any additional information requested by the secretary.

E. The owner or operator shall comply with the terms of its approved registration.

F. A violation of the terms of an approved registration may be deemed to be a public nuisance or the facility may be deemed to be an unpermitted solid waste facility subject to enforcement orders under the Solid Waste Act.

G. The owner or operator of a facility required to be registered under this section shall update its registration to reflect any material change in its operations.

H. The owner or operator of a recycling facility, composting facility, collection center, small animal crematorium, ~~or~~ an air curtain incinerator, or a law enforcement pharmaceutical incinerator shall not create a public nuisance. Failure to comply with the terms of the registration may be deemed a public nuisance. If the secretary determines, based on the information submitted with the registration or based upon any other information that the facility will be or has become a public nuisance, or that a facility covered by this section is in violation of the Solid Waste Act or 20.9.2 - 20.9.10 NMAC, the secretary may deny the registration, issue an order requiring the owner or operator to abate the public nuisance, or may issue any other order pursuant to the Solid Waste Act or 20.9.2 - 20.9.10 NMAC, or any combination thereof. The owner or operator or other affected person may appeal the secretary's order by

filing a request for hearing within 30 days of the date of the secretary's order. The appeal shall be conducted in accordance with the procedures in 20.1.5 NMAC, Adjudicatory Procedures- Environment Department.

I. The owner or operator of every recycling facility and composting facility shall have a certified operator or representative present at all times while the facility is being operated.

J. The owner or operator of a recycling facility or composting facility that accepts only source separated recyclable or compostable material shall submit an annual report to the department within 45 days from the end of each calendar year, describing the operations of the past year. The reports must be certified as true and accurate by the owner or operator and shall include:

(1) the type and weight or volume of recyclable material received during the year;

(2) the type and weight or volume of recyclable material sold or otherwise disposed off site during the year;

(3) final disposition of material sold or otherwise disposed off-site; and

(4) any other information requested by the secretary.

K. The owner or operator of a recycling facility, composting facility or collection center that conducts a tire recycling operation shall comply with the applicable operating procedures required by 20.9.20 NMAC.

L. The owners or operators of law enforcement pharmaceutical incinerators shall utilize one of the following types of incinerators:

(1) a high temperature incinerator such as cement kilns (furnaces that operate in the range of 1000° C - 2000° C) used for the destruction of hazardous waste;

(2) a two-chamber incinerator that operates at a minimum temperature of 850° C, with a combustion time of at least two seconds in the second chamber; or

(3) an alternative incinerator at least as protective as any of the incinerators as described in paragraphs (1) and (2) of this subsection and approved by the department.

M. The owners and operators of law enforcement pharmaceutical incinerators shall retain on file incinerator specifications, including an operation and maintenance manual, temperatures reached, controls, retention time, pollution control equipment, maintenance requirements, and process efficiency.

N. The owners and operators of law enforcement pharmaceutical incinerators shall retain on file a plan that addresses the storage, transport, and disposal of the incinerator ash and encapsulated pharmaceutical waste. Owners and operators of law enforcement pharmaceutical

incinerators may store ash for up to 12 months before disposal.

O. The design and operation of a law enforcement pharmaceutical incinerator shall conform to all applicable codes and standards including, but not limited to, the American national standards institute, local zoning, and the building code requirements for the city, county or municipality in which the facility is located.

P. Plastic containers, infectious waste, and syringes and needles shall not be burned in a law enforcement pharmaceutical incinerator.

Q. The owners and operators of law enforcement pharmaceutical incinerators shall submit a summary describing the household pharmaceutical waste collections to the department within 7 calendar days of a limited-duration event or 45 days from the end of each calendar year for an on-going program. The reports shall include:

(1) the weight or volume of household pharmaceutical wastes received during the limited-duration event or program year;

(2) the weight or volume of household pharmaceutical wastes received during the limited-duration event or program year by disposal method, including incineration or disposal at a permitted landfill, processing facility or hazardous waste facility, and the weight or volume of ash generated and disposed of; and

(3) final disposal destinations of any household pharmaceutical wastes and ash disposed of off-site.

[20.9.3.27 NMAC - Rp, 20 NMAC 9.1.II.213, 08/02/07; A, 07/30/11]

20.9.3.28 ADDITIONAL REGISTRATION REQUIREMENTS FOR COMPOSTING FACILITIES THAT ACCEPT GREATER THAN 25 TONS PER DAY COMPOSTABLE MATERIAL OR GREATER THAN 5 TONS PER DAY OF MATERIAL THAT WOULD OTHERWISE BECOME SPECIAL WASTE.

A. Any person operating or proposing to operate a composting facility that accepts greater than 25 tons per day annual average compostable material or greater than 5 tons per day annual average of material that would otherwise become special waste (e.g. sludge, offal, petroleum contaminated soils), shall submit the following information in addition to that contained in 20.9.3.27 NMAC:

(1) site plans and cross-sections of the proposed facility, drawn to scale, indicating the location of buildings, access roads, entrances and exits, drainage, material storage and treatment areas, utilities, fences and other site improvements;

(2) the composition of the waste to

be received at the facility;

(3) the method to be used to convert the waste into a feedstock for the composting process, including material separation and recovery systems;

(4) a characterization of the feedstock used as the design basis of the facility which describes:

(a) composition by material type;

(b) physical and chemical properties including:

(i) moisture content; and

(ii) percent organic and inorganic matter; and

(iii) process efficiency as measured by conversion of volatile solids;

(5) a description of the composting process to be used, including:

(a) the method of measuring, shredding, and mixing materials;

(b) temperature monitoring equipment and the location of all temperature and any other type of monitoring points, and the frequency of monitoring;

(c) the method of moisture control, including moisture quantity, source, monitoring and frequency of monitoring;

(d) a description of any proposed additive material, including its quantity, quality, and frequency of use;

(e) special precautions or procedures for operation during high wind, heavy rain, snow and freezing conditions;

(f) estimated composting time duration;

(g) for windrow systems, the windrow construction, including width, length, and height;

(h) the method and frequency of aeration; and

(i) for in-vessel composting systems, a process flow diagram of the entire process, including all major equipment and flow streams;

(6) a general description of the ultimate use for the finished compost and method for removal from the site;

(7) for composting facilities accepting sewage sludge, a plan for compliance with 40 CFR Part 503, including, but not limited to, reporting, composting methods and times, and testing methods and frequencies; and

(8) a demonstration that the ground water will be protected and will comply with all applicable ground water protection standards, including those specified in 20.6.2 NMAC.

B. The owner operator of a composting facility that is designed to or does accept more than 5 tons per day annual average of material that would otherwise be special waste or more than 25 tons annual average of total compostable material per day shall submit a nuisance abatement plan detailing how it will comply with ~~[20.9.3.30 NMAC]~~ Subsection E of 20.9.3.28 NMAC

if so ordered.

C. The owner operator of a composting facility that is designed to or does accept more than 5 tons per day annual average of material that would otherwise be special waste or more than 25 tons annual average of total compostable material per day shall submit a financial assurance mechanism in compliance with 20.9.10.1-20.9.10.13 NMAC, in order to assure sufficient funds in the event that the secretary requires abatement of a nuisance at the facility. The financial assurance mechanism must be approved by the secretary prior to the operation of the facility.

D. The owner or operator of a composting facility that is designed to or does accept more than 5 tons per day annual average of sludge or more than 25 tons of total compostable material per day annual average shall keep records sufficient to demonstrate that its inventory of compostable material or end product does not exceed the inventory used for purposes of estimating the cost of abatement of a nuisance pursuant to Paragraph (2) of Subsection A of 20.9.10.9 NMAC. If the records are insufficient to make this demonstration, or the records are not produced at the request of the department, storage of the materials are hereby deemed illegal disposal of solid waste and the facility is hereby deemed to be an unpermitted solid waste facility and the owner or operator may be subject to penalties, permitting requirements and nuisance abatement orders.

E. Owners and operators of composting facilities that accept greater than 25 tons per day annual average of compostable material or greater than 5 tons per day of what would otherwise be special waste shall comply with the following requirements when ordered by the secretary for the purpose of abating nuisance:

(1) cleanup and disposal of all compostable material;

(2) cleanup and disposal of all end product from the composting facility; and

(3) cleanup and disposal of all fugitive trash, solid waste, or other materials creating a nuisance at the facility.

[20.9.3.28 NMAC - N, 08/02/07; A, 07/30/11]

20.9.3.29 ADDITIONAL REQUIREMENTS FOR RECYCLING FACILITIES THAT DO NOT ACCEPT SOLID WASTE.

A. A recycling facility that does not accept solid waste shall include, in its registration application filed pursuant to 20.9.3.27 NMAC, a plan for disposal of solid wastes that are unavoidably collected.

B. A recycling facility that does not accept solid waste shall keep records sufficient to demonstrate the following:

(1) that it takes reasonable

measures to assure that it accepts only source separated recyclable materials and solid wastes are not accepted;

(2) that after an initial accumulation period, the quantity of recyclable materials that were recycled during each successive calendar year was at least 75 percent of the quantity of recyclable materials in inventory; the accumulation period is to be based on a three year rolling average of the facility's stock of the recyclable material at the end of the previous calendar year; and

(3) that the inventory of recyclable materials or end product does not exceed the inventory used for purposes of estimating the cost of abatement of a nuisance pursuant to Paragraph (2) of Subsection A of 20.9.10.9 NMAC.

C. If the operating procedures and records are insufficient to make the demonstrations in Subsection B of this section, or the records are not produced at the request of the department, storage of the materials are hereby deemed illegal disposal of solid waste and the facility is hereby deemed an unpermitted solid waste facility and the owner or operator may be subject to penalties, permitting requirements and nuisance abatement orders.

D. The owner operator of a recycling facility that is designed to or does accept more than 25 tons per day annual average per calendar year of recyclable material shall submit a nuisance abatement plan detailing how it will comply with ~~[20.9.3.30 NMAC]~~ Subsection G of 20.9.3.29 NMAC if so ordered.

E. The owner operator of a recycling facility that is designed to or does accept more than 25 tons per day annual average per calendar year of recyclable material shall submit a financial assurance mechanism in compliance with 20.9.10.9-13 NMAC, in order to assure sufficient funds in the event that the secretary requires abatement of a nuisance at the facility. The financial assurance mechanism must be approved by the secretary prior to the operation of the facility.

F. The owner or operator of a recycling facility that is designed to or does accept more than 25 tons per day annual average of recyclable material shall have a certified operator or representative present at all times while the facility is operational.

G. Owners and operators of recycling facilities that accept greater than 25 tons per day annual average of recyclable materials shall comply with the following requirements when ordered by the secretary for the purpose of abating nuisance:

(1) cleanup and disposal of all recyclable material;

(2) cleanup and disposal of all end product from the recycling facility; and

(3) cleanup and disposal of all fugitive trash, solid waste, or other materials

creating a nuisance at the facility.

[20.9.3.29 NMAC - N, 08/02/07; A, 07/30/11]

20.9.3.30 [REQUIREMENTS FOR FACILITIES REQUIRED TO SUBMIT NUISANCE ABATEMENT PLANS.

Owners or operators of composting facilities that accept greater than 25 tons per day annual average of compostable material or greater than 5 tons per day of what would otherwise be special waste, and recycling facilities that accept greater than 25 tons per day annual average of recyclable materials shall comply with the following requirements when ordered by the secretary for the purpose of abating a nuisance:

A. cleanup and disposal of all recyclable or compostable material;

B. cleanup and disposal of all end product from the composting or recycling facility; and

C. cleanup and disposal of all fugitive trash, solid waste, or other materials creating a nuisance at the facility;]

PERMIT BY RULE REQUIREMENTS FOR LAW ENFORCEMENT HOUSEHOLD PHARMACEUTICAL TAKE-BACK PROGRAMS.

A. Any law enforcement household pharmaceutical take-back program that collects, stores, processes, transports or disposes of household pharmaceutical waste must comply with the following requirements:

(1) the law enforcement household pharmaceutical take-back program must maintain a registration with the New Mexico board of pharmacy;

(2) antineoplastic drugs should be handled, segregated and disposed of as hazardous waste under 40 CFR 261, Subparts C and D, and not as solid waste;

(3) Resource Conservation and Recovery Act (RCRA) P and U-listed hazardous pharmaceutical wastes, and D-list chemicals that cause a waste to exhibit toxicity characteristics when present above the maximum concentration level (e.g., arsenic D004, barium D005) should be disposed of at a permitted hazardous waste disposal facility, and not as solid wastes;

(4) collected household pharmaceutical waste shall not be disposed of by placing in drains, toilets, storm water drains, surface waters, on the ground, or in an unpermitted solid waste landfill;

(5) household pharmaceutical waste may not be incinerated within the state with other waste materials, construction and demolition debris, or special wastes;

(6) law enforcement household pharmaceutical waste collection events must retain an operating plan on file that contains the following:

(a) a description of how household pharmaceutical waste will be disposed of

using a method found in Paragraph (7) of Subsection A of 20.9.3.30 NMAC;

(b) a description of the specific screening and acceptance criteria that ensure that only authorized household pharmaceutical waste is accepted and disposed of;

(c) the hours of operation and dates of law enforcement household pharmaceutical take-back program collection events, and details of any drop-box programs using secure bins outside the normal hour of operation;

(d) procedures for response to emergency situations, including equipment break downs, to ensure that stored household pharmaceutical waste, ash and encapsulated household pharmaceutical waste will be removed from the facility in a timely manner to avoid nuisances or hazards; and

(e) a hazard communication, health and safety plan for law enforcement household pharmaceutical take-back program personnel that includes safety procedures and the proper use of personal protective equipment;

(7) collected household pharmaceutical waste may only be disposed of in the approved methods listed below:

(a) at a registered high-temperature incinerator (furnaces that operate in the range of 1000°C - 2000°C) used for the destruction of hazardous waste, such as cement kilns;

(b) at a permitted infectious or medical waste processing facility;

(c) at a registered two-chamber incinerator that operates at a minimum temperature of 850° C, with a combustion time of at least two seconds in the second chamber;

(d) at a permitted landfill after the household pharmaceutical waste has been encapsulated in a plastic drum filled with a hardening medium such as PPC cement or a cement/lime mixture;

(e) at a transformation facility permitted to accept pharmaceutical waste; or

(f) an alternate disposal method at least as protective as any of the methods described in subparagraphs (a) through (e) of this paragraph and approved by the department.

B. The department must be notified both orally and in writing within 24 hours of an occurrence of a spill, fire, flood, explosion or similar incident at a law enforcement household pharmaceutical take-back program collection event.

[20.9.3.30 NMAC - N, 08/02/07; 20.9.3.30 NMAC - Repealed, 07/30/11; 20.9.3.30 NMAC - N, 07/30/11]

**NEW MEXICO
DEPARTMENT OF FINANCE
AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION**

**TITLE 2 PUBLIC FINANCE
CHAPTER 110 L O C A L
GOVERNMENT GRANTS
PART 5 J U V E N I L E
ADJUDICATION FUND GRANTS TO
LOCAL GOVERNMENTS**

2.110.5.1 ISSUING AGENCY:
Department of Finance and Administration.
[2.110.5.1 NMAC - N, 7/1/2011]

2.110.5.2 SCOPE: All county and municipal governments.
[2.110.5.2 NMAC - N, 7/1/2011]

**2.110.5.3 S T A T U T O R Y
AUTHORITY:** Section 34-16-1 NMSA 1978. Section 9-6-5(E) NMSA 1978.
[2.110.5.3 NMAC - N, 7/1/2011]

2.110.5.4 D U R A T I O N :
Permanent.
[2.110.5.4 NMAC - N, 7/1/2011]

2.110.5.5 EFFECTIVE DATE:
July 1, 2011, unless a later date is cited at the end of a section.
[2.110.5.5 NMAC - N, 7/1/2011]

2.110.5.6 OBJECTIVE:
A. In 2009, the New Mexico legislature enacted Laws of 2009, Chapter 244, which created the juvenile adjudication fund and was compiled as Section 34-16-1 NMSA 1978. Money in the juvenile adjudication fund is appropriated to DFA to administer the fund and to provide an alternative adjudication process for juveniles charged with traffic offenses and other misdemeanors.

B. The objective of 2.110.5 NMAC is to establish a juvenile adjudication fund grant program to fund programs providing alternative procedures of adjudication for juveniles charged with traffic offenses and other misdemeanors.
[2.110.5.6 NMAC - N, 7/1/2011]

2.110.5.7 DEFINITIONS:
A. **"Applicant"** means a county, municipality, or combination of two or more counties or municipalities that submits an application for a grant.

B. **"Alternative adjudication program"** means a program providing alternative procedures of adjudication for juveniles charged with traffic offenses and other misdemeanors. Teen courts are a type of alternative adjudication program.

C. **“Cash transfer”** means the transfer of funds by a grantee from an established, separate grant fund to other fund(s) in the grantee’s budget.

D. **“Charged”** means accused of traffic offenses or other misdemeanors. It is not necessary for formal criminal proceedings to be initiated through issuance of a citation or otherwise for a juvenile to be charged for purposes of this rule.

E. **“Components”** means programs that are designed to address one or more specific traffic or other misdemeanor offenses or their underlying causes, including, but not limited to, programs addressing:

- (1) substance abuse prevention;
- (2) shoplifting;
- (3) DWI;
- (4) truancy;
- (5) anger management;
- (6) drivers education;
- (7) counseling;
- (8) team building;
- (9) smoking cessation;
- (10) tutoring;
- (11) peer counseling;
- (12) parental involvement; and
- (13) teen parenting.

F. **“DFA”** means the department of finance and administration.

G. **“Division”** means DFA’s local government division.

H. **“Grant”** means the award of funds from the juvenile adjudication fund to a grantee to assist an alternative adjudication program.

I. **“Grantee”** means a county, municipality, or combination of two or more counties or municipalities receiving a grant.

J. **“Grant funds”** means the funds awarded from the juvenile adjudication fund pursuant to a grant.

K. **“Grant program”** means the program established by this rule to make grants from the juvenile adjudication fund.

L. **“JPO”** means juvenile probation officer.

M. **“Juvenile adjudication fund”** means the fund created by Section 34-16-1 NMSA 1978.

N. **“Program guidelines”** means guidelines for the operation of alternative adjudication programs established and revised by the division from time to time.

O. **“Supplantation”** means the replacement or substitution of existing funding with grant funds. [2.110.5.7 NMAC - N, 7/1/2011]

2.110.5.8 ADMINISTRATIVE REQUIREMENTS:

A. Grantees must comply

with the program guidelines, all applicable laws and regulations, as well as requirements and procedures established in the grant agreement between the division and the grantee.

B. Grantees must establish a separate fund in their budget and accounting system to account for grant funds. This fund must be included in the grantee’s budget process and financial reports.

C. Grantees must have financial management systems that meet the standards set forth in this subsection.

(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant agreement.

(2) Accounting records. Grantees must maintain records that adequately identify the source and application of funds provided for alternative adjudication programs. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal control. Effective control and accountability must be maintained for all grant funds and items purchased with grant funds. Grantees must adequately safeguard all such funds and items and must assure that they are used solely for authorized purposes.

(4) Budget control. Grantees must have adequate systems to ensure actual expenditures or outlays do not exceed budgeted amounts for each grant.

(5) Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

The division may review the adequacy of the financial management system of any applicant or grantee as part of a preaward review or at any time after grant award.

[2.110.5.8 NMAC - N, 7/1/2011]

2.110.5.9 ELIGIBLE APPLICANTS:

A. Counties and incorporated municipalities in New Mexico are eligible to apply for grants. Two or more counties or municipalities may jointly apply for a grant, provided that the joint applicants must be within reasonable geographic proximity to each other and one applicant must be identified through joint resolution of the governing bodies of the applicants to be the lead applicant, responsible to the division for the administration of the grant.

B. Pueblo and tribal governments and non-profit organizations are not eligible to apply directly for grants.

These organizations may receive funds from grantees as subgrantees, in the case of pueblo or tribal governments, or service providers, in the case of pueblo or tribal governments and non-profit organizations.

[2.110.5.9 NMAC - N, 7/1/2011]

2.110.5.10 ELIGIBILITY REQUIREMENTS:

A. The threshold eligibility requirements set forth in this subsection must be met for an applicant to be considered for a grant.

(1) The head of the local JPO office responsible for the geographic area in which the alternative adjudication program covered in the application is located must submit a letter indicating the intent of the JPOs in that office to refer juveniles to the alternative adjudication program during the period covered by the requested grant.

(2) The alternative adjudication program covered by the application must have a qualified program coordinator in place responsible for the overall management of the alternative adjudication program. The applicant must identify the coordinator and explain the coordinator’s qualifications in the application.

(3) The applicant must have completed all audits required under the Audit Act, have a budget approved by the division pursuant to the Chapter 6, Article 6 NMSA 1978, and be current on all financial reports required to be submitted to the division under that article.

(4) A minimum of 10 percent of the proposed operating budget of the alternative adjudication program to be assisted with grant funds must come from sources other than grant funds or other state funds. Cash valued in-kind contributions may be used to meet this matching requirement; provided, however, that, in the event the division disagrees with the grantee’s valuation of in-kind contributions, the division’s determination of the cash value of the in-kind contributions shall control for purposes of compliance with this matching requirement.

(5) Only alternative adjudication programs are eligible to be assisted with grant funds.

B. If the alternative adjudication program covered by the application has been in operation less than two consecutive years, the additional threshold eligibility requirements in this subsection must also be met for an applicant to be considered for a grant; provided, however, that the division may waive the additional requirements in this subsection if the applicant demonstrates and the division determines in writing that good cause exists to believe that the alternative adjudication program covered by the application will satisfactorily operate without a mentorship relationship with an established alternative

adjudication program.

(1) The alternative adjudication program must have a mentorship relationship with an alternative adjudication program that has been operational for more than two consecutive years. Documentation of that mentorship relationship must be submitted with the application.

(2) The mentor alternative adjudication program must submit a letter supporting the application for grant assistance for the alternative adjudication program that has been in operation less than two consecutive years.

[2.110.5.10 NMAC - N, 7/1/2011]

2.110.5.11 ELIGIBLE EXPENDITURES:

A. In accordance with the budget established pursuant to Subsection B of this section, grant funds may be spent on the following expenditures in support of the alternative adjudication program financially assisted by a grant:

(1) reasonable amounts of supplies and program materials that are directly related to the alternative adjudication program and will be consumed during the grant period;

(2) reasonable training expenditures for employees or volunteers providing direct services to the alternative adjudication program;

(3) travel for juvenile participants in and personnel and contractors of alternative adjudication programs, in accordance with and subject to the limitations provided in the Per Diem and Mileage Act and implementing regulations;

(4) the portion of employee salaries and benefits of personnel employed by an alternative adjudication program and county and municipal employees who provide direct services for the alternative adjudication program;

(5) indirect costs, such as overhead, salaries and benefits for support staff, equipment costs, administrative expenses, supplies, and other expenses incurred by the grantee that are not direct costs of the alternative adjudication program, not to exceed 5% of the total grant funds; and

(6) contracts for services that directly support the alternative adjudication program.

B. Grantees shall develop and the division shall approve a budget for grant funds in such detail and such format as the division shall from time to time prescribe. All expenditures must be in accordance with the approved budget. The budget may only be amended as provided in the grant agreement.

[2.110.5.11 NMAC - N, 7/1/2011]

2.110.5.12 INELIGIBLE EXPENDITURES:

used for:

A. capital outlay expenditures, including, but not limited to, the lease or purchase of land, buildings, facilities, furnishings, or equipment;

B. the purchase of food or beverages;

C. supplantation;

D. cash transfers; or

E. licensing, professional membership, or organizational fees or dues.

[2.110.5.12 NMAC - N, 7/1/2011]

2.110.5.13 APPLICATION PROCEDURES, FORM AND CONTENT:

A. For each application cycle, the division shall determine:

(1) the amount available for grants;

(2) the limit (if any) that any single grantee may be awarded;

(3) the grant period during which grant funds may be expended;

(4) the form and content of applications;

(5) the application deadline;

(6) the specific evaluation criteria to be used to evaluate and rate applications; and

(7) the form of the grant agreement.

B. Two copies of the application for grant funds, one of which has original signatures, must be submitted to: Department of Finance and Administration Local Government Division, Bataan Memorial Building, Suite 201, Santa Fe, New Mexico 87501, Phone: (505) 827-4950.

C. Applications must be received at the local government division by 4:00 p.m. of the designated application deadline.

D. In the event that the application is incomplete or requires modification, the applicant will be promptly notified by the division. The applicant must then immediately submit the information and modification requested. Applicants that do not respond in writing may be disqualified.

E. The applicant's governing body must authorize by resolution the applicant to submit the application. A copy of the resolution must be included with the application.

[2.110.5.13 NMAC - N, 7/1/2011]

2.110.5.14 APPLICATION REVIEW, RATING AND SELECTION:

A. The evaluation criteria for applications shall be developed for each application cycle and shall include, but not be limited to, the following:

(1) overall quality of the alternative adjudication program for which grant funds are sought and proposal approach;

(2) financial need of the alternative adjudication program and estimated impact

of grant funds (e.g., grant funds would allow alternative adjudication program to remain operational; grant funds would allow the alternative adjudication program to serve more clients; or grant funds would allow alternative adjudication program to provide a higher level of service to clients);

(3) number of clients to be served;

(4) number and quality of components to be provided to clients;

(5) past performance of the alternative adjudication program (except for new programs);

(6) expenditure rates and performance of any current or past grant(s); and

(7) whether the alternative adjudication program will receive direct legislative appropriations during the grant period, in which case the amount of grant funds that the grantee would otherwise be awarded will be reduced by the amount of such direct legislative appropriations for the alternative adjudication program.

B. Evaluators selected by the division shall evaluate all applications for eligibility and completeness. Complete applications that meet all threshold eligibility requirements shall be evaluated and rated based upon the evaluation criteria established in the application. Funding recommendations will be made to the division director based upon those ratings.

C. At any time during the application process, the division may request, and applicants shall provide, any additional information and documentation that the division feels is necessary to evaluate the application.

D. Division staff may consult appropriate non-staff experts for information and advice concerning technical aspects of any application.

E. The division director shall review staff ratings and recommendations and make grant program award decisions. The amount of the grant award may be less than the amount requested in the application

F. The division will enter into grant agreements with grantees. The grant period will ordinarily be for a single fiscal year; provided, however, that the division may, in its discretion, provide a longer or shorter grant period.

[2.110.5.14 NMAC - N, 7/1/2011]

2.110.5.15 REVERSIONS AND SUPPLEMENTAL FUNDING:

A. Reversions. If, at the end of the grant period set forth in the grant agreement, an unexpended balance of funds remains, the unexpended balance shall revert to the juvenile adjudication fund.

B. Reversions / supplemental funding. When funds are reverted as provided in Subsection A of

this section, or additional funds are made available due to any other cause, the division may take one or more of the following actions:

- (1) set aside the funds for contingencies or emergencies;
 - (2) make the funds available for grants during the next regular application cycle; or
 - (3) make the funds available through a special application cycle.
- [2.110.5.15 NMAC - N, 7/1/2011]

2.110.5.16 REPORTING REQUIREMENTS:

A. Grantees shall submit a quarterly report to the division on October 15, January 15, April 15, and July 10.

B. The division shall prescribe the format and content of quarterly reports, which shall include, but not be limited to, the following:

- (1) fiscal reporting on the expenditure of grant funds and match expenditures; and
 - (2) program reporting, including, but not limited to, the number of clients served; the gender, age, grade, and ethnicity of clients; the type of offense; the number of components provided to clients; and the number of open, pending and closed cases.
- [2.110.5.16 NMAC - N, 7/1/2011]

2.110.5.17 EVALUATION:

A. The division may conduct periodic evaluations of grantees and alternative adjudication programs receiving grant funds to determine compliance with applicable law and regulations, the grant agreement, and the program guidelines.

B. Grantees must cooperate fully with such evaluations, including, but not limited to, by making all financial and program records available for inspection and making personnel available for interview.

[2.110.5.17 NMAC - N, 7/1/2011]

2.110.5.18 SANCTIONS:

A. The division may impose sanctions on a grantee based upon one or more of the following grounds:

- (1) improper or inadequate performance, including, but not limited to, the failure to implement grant activities in a timely fashion or in accordance with the grant agreement or conduct the alternative adjudication program in accordance with the program guidelines;
- (2) fraud, abuse, misconduct, or misuse of grant funds;
- (3) failure to correct monitoring or audit findings;
- (4) failure to document and report to the division all grant expenditures;
- (5) lack of continuing capacity to successfully administer the alternative adjudication program;

(6) implementation of an alternative adjudication program or budget change without prior division approval;

(7) non-compliance with one or more condition(s) of the grant agreement;

(8) criminal conduct involving the alternative adjudication program; or

(9) violation of applicable laws or regulations.

B. The sanctions set forth in this subsection are the types of permissible sanctions that may be imposed upon a grantee. More than one sanction may be imposed for the same ground(s) giving rise to the sanction. The sanction or sanctions imposed will be based upon the underlying ground(s) for the sanction(s), past performance of and sanctions imposed upon the grantee, and the importance of the state interest implicated by the ground(s) for the sanction(s).

(1) Disallowance of expenditures. A grantee may not be reimbursed for expenditures.

(2) Withholding reimbursement. The division director may temporarily withhold payment, or disallow further draw-downs.

(3) Suspension. The division director may suspend the grant agreement. The grantee shall not be reimbursed for expenditures incurred during the period of the suspension unless the division director subsequently authorizes such reimbursement in writing.

(4) Repayment to the juvenile adjudication fund of amounts previously paid by the division to the grantee.

(5) Termination of the grant agreement.

(6) Disqualification from receiving future grants.

C. Before imposing any sanctions on a grantee, the division director shall give the grantee written notice of the proposed sanction and the grounds for the proposed sanction. The grantee shall be provided a reasonable opportunity to present facts and arguments challenging the appropriateness of the proposed sanction and the grounds upon which it is based. The division director shall issue a final decision after duly considering the grantee's facts and arguments or after the time for presenting them has passed.

[2.110.5.18 NMAC - N, 7/1/2011]

HISTORY OF 2.110.5 NMAC:
[RESERVED]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

Explanatory paragraph: This is an amendment to 8.200.400 NMAC, Sections 8 and 10, which will be effective July 1, 2011. The Medical Assistance Division is amending the mission statement and Subparagraph (4) of Subsection B, to include men in family planning and related services in families whose income is below 185 percent of the federal income poverty level.

8.200.400.8 MISSION: To reduce the impact of poverty on people living in New Mexico and to assure low income and ~~[disabled—individuals]~~ individuals with disabilities in New Mexico equal participation in the life of their communities. [8.200.400.8 NMAC - N/E, 10-1-09; A, 7-1-11]

8.200.400.10 BASIS FOR DEFINING GROUP: Individuals are eligible for medicaid if they meet the specific criteria for one of the eligibility categories. In New Mexico, other medical assistance programs for individuals who do not qualify for medicaid are available, such as the children's medical services program (category 007) administered by the New Mexico department of health.

B. **Medical assistance for women and children:** ISD ~~[offices]~~ caseworkers establish eligibility for medical assistance for women and children (MAWC) categories. For these categories, medicaid coverage does not depend on one or both parents being dead, absent, disabled, or unemployed. Children and pregnant women in intact families may be eligible for these medicaid categories.

(4) **Category 035:** This category provides medicaid coverage for pregnancy-related services for pregnant women and family planning and related services for men and women in families whose income is below 185 percent of the federal income poverty level. There is no resource test for this category.

[2-1-95; 1-1-97; 4-1-98; 6-30-98; 3-1-99; 8.200.400.10 NMAC - Rn, 8 NMAC 4.MAD.402 & A, 7-1-01; A, 7-1-02; A, 10-1-02; A, 7-1-05; A, 2-1-06; A, 12-1-06; A/E, 12-1-06; A, 12-1-08; A, 7-1-11]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, Section 12, effective July-1-11.

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT): Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

DEDUCTION	AMOUNT
A. Personal needs allowance for institutionalized spouse	\$63
B. Minimum monthly maintenance needs allowance (MMMNA)	
C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:	
(1) If allowable shelter expenses of the community spouse exceed \$547 \$552 deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.	
(2) Excess shelter allowance may not exceed a maximum of \$917 \$900.	
D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.	
E. Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income)	
F. Non-covered medical expenses	
G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed \$2,739.	

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07; A, 7-1-07; A, 1-1-08; A, 7-1-08, A, 1-1-09, A, 4-1-09; A, 7-1-09; A, 7-1-11]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.235.400 NMAC, Sections 7, 9, 12, 16 and 17, effective July 1, 2011. The Chapter name has also been amended.

CHAPTER 235 M E D I C A I D ELIGIBILITY - PREGNANCY [AND/OR] OR FAMILY PLANNING SERVICES (CATEGORY 035)

8.235.400.7 DEFINITIONS: ~~[Creditable coverage: Health insurance that includes any of the following: a group health plan, such as one obtained through an employer or a spouse's employer; health insurance coverage, including individual coverage; medicare and medicaid; CHAMPUS/tricare; a medical program of the Indian Health Service Act or of a tribal organization; a public health plan; and a health benefit plan under section 5(e) of the Peace Corps Act. It also includes: any hospital or medical service policy or insurance issuer, which includes, but is not limited to, comprehensive non-group, small group and large group policies, basic hospital expense policies, basic medical-surgical expense policies, and major medical~~

~~expense policies.] [RESERVED]~~
[8.235.400.7 NMAC, A, 6/1/07; A, 7/1/11]

8.235.400.9 PREGNANCY-RELATED SERVICES ONLY AND FAMILY PLANNING SERVICES - CATEGORY 035:

A. **Pregnancy-related services only:** An applicant/recipient who meets specified eligibility standards and whose pregnancy has been medically verified may be eligible for medicaid coverage for pregnancy-related services until the end of the second month following the month in which the child is born or the pregnancy terminates.

B. **Family planning services:** [Effective June 1, 2004] Men and women [of child-bearing age] who meet specified eligibility standards may be eligible for medicaid coverage for family planning and related services for a [twelve (12)] 12-month period.

[2/1/95, 6/30/98; 8.235.400.9 NMAC - Rn, 8 NMAC 4.PSO.400, 7/1/03; A, 6/1/04; A, 7/1/11]

8.235.400.12 ENUMERATION: An applicant/recipient must furnish [her] his/her social security account number. Medicaid eligibility is denied or terminated for an applicant/recipient who fails to furnish his/her social security number.

[2/1/95; 6/30/98; 8.235.400.12 NMAC - Rn, 8 NMAC 4.PSO.411, 7/1/03; A, 7/1/11]

8.235.400.16 SPECIAL RECIPIENT REQUIREMENTS: For family planning and related services medicaid, [a woman may not have current creditable health insurance coverage from another source, including medicare] an applicant/recipient may have creditable health insurance coverage.

[2/1/95; 8.235.400.16 NMAC - Rn, 8 NMAC 4.PSO.420, 7/1/03; A, 6/1/07; A, 7/1/11]

8.235.400.17 AGE: To be eligible for pregnancy-related medicaid, specific age requirements are not a factor. [To be eligible for family planning medicaid a woman must be from 18 through 50 years of age.] For family planning and related services medicaid there is not an age limit for men and women.

[2/1/95; 8.235.400.17 NMAC - Rn, 8 NMAC 4.PSO.421, 7/1/03; A, 6/1/07; A, 10/1/07; A, 7/1/11]

NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.235.600 NMAC, Sections 9, 12 and 15, effective July 1, 2011. The Chapter name has also been amended.

CHAPTER 235 M E D I C A I D ELIGIBILITY - PREGNANCY [AND/OR] OR FAMILY PLANNING SERVICES (CATEGORY 035)

8.235.600.9 GENERAL BENEFIT DESCRIPTION:

A. **Pregnancy-related services only:** A woman determined eligible for medicaid under pregnancy-related services only receives services restricted to and related to pregnancy only. These services do not cover procedures, services, pharmaceuticals, or miscellaneous items which are not related to pregnancy.

B. **Family planning services:** A [woman] recipient determined eligible for family planning and related services only receives services, consultations, and supplies related to birth control and pregnancy prevention which are prescribed and furnished by physicians, hospitals, clinics, pharmacies, and other medicaid providers.

[2/1/95; 6/30/98; 8.235.600.9 NMAC - Rn, 8 NMAC 4.PSO.600 & A, 6/1/04; A, 7/1/11]

8.235.600.12 ONGOING BENEFITS:

A. **Pregnancy-related**

services: A woman eligible for pregnancy-related services remains eligible throughout her pregnancy and for two months after the month of delivery or after the month in which the pregnancy terminates. Changes in household income do not affect her eligibility during this period. No periodic reviews are required during this period. After the two-month post partum period, the woman will automatically be converted to family planning services if she meets the age requirement and has no other creditable health insurance.

B. Family planning

services: A woman who is eligible for family planning and related services or who is automatically converted to family planning and related services after her pregnancy-related services end remains eligible for 12 months. No periodic reviews are required during this period. Changes in household income do not affect her eligibility during this period. If the woman should become pregnant during this period, she should contact her income support division [worker] caseworker to explore eligibility for other medicaid categories. A man who is eligible for family planning and related services remains eligible for 12 months. If [she] the recipient moves out of state or requests case closure, [she] he/she loses eligibility.

[2/1/95; 6/30/98; 8.235.600.12 NMAC - Rn, 8 NMAC 4.PSO.624 & A, 6/1/04; A, 5/1/08; A, 7/1/11]

8.235.600.15 CHANGES IN ELIGIBILITY DUE TO INCOME:

A. Pregnancy-related services only - A recipient who is pregnant and who loses eligibility solely because of a change in family income remains eligible under category 035 throughout the remainder of the pregnancy and the two [(2)] months following the month the pregnancy ends. This provision applies even if the family income exceeds the federal poverty income guidelines.

B. Family planning

services: A man or woman who is receiving family planning and related services only under medicaid will not lose eligibility at any time during the 12-month certification period, because of an increase in family income which exceeds the federal poverty income limit.

[2/1/95; 6/30/98; 8.235.600.15 NMAC - Rn, 8 NMAC 4.PSO.630 & A, 6/1/04; A, 7/1/11]

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

Notice of Repeal

1.18.569 NMAC, Executive Records Retention and Disposition Schedule for the NM Organic Commodity Commission, is being repealed, effective July 14, 2011. The New Mexico Commission of Public Records at their June 14, 2011 meeting repealed the current rule.

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

June 14, 2011

Leo R. Lucero, Agency Analysis Bureau Chief
NM Commission of Public Records
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rules:

- * 1.18.420 NMAC ERRDS, Regulation and Licensing Department;
- * 1.18.516 NMAC ERRDS, Department of Game and Fish;
- * 1.18.630 NMAC ERRDS, Human Services Department; and
- * 1.18.954 NMAC ERRDS, Department of Agriculture.

A review of the rules shows that their impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo
State Records Administrator

SJ/lrl

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

SYNOPSIS

1.18.420 NMAC ERRDS, Regulation and Licensing Department

1. Subject matter: 1.18.420 NMAC, Executive Records Retention and Disposition Schedule for the Regulation and Licensing Department. This is an amendment to 1.18.420 NMAC, ERRDS, Regulation and Licensing Department amending Sections 1, 3, 6, 7, 8, and 9 and adding Section 840. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Center and Archives (New Mexico Commission of Public Records), and approved by the State Records Administrator, the Superintendent of the Regulation and Licensing Department and legal counsel for the Regulation and Licensing Department.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Regulation and Licensing Department. Persons and entities normally subject to the rules and regulations of the Regulation and Licensing Department may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Regulation and Licensing Department.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Regulation and Licensing Department. Any person or entity outside the covered geographical area that conducts business with or through the Regulation and Licensing Department may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: July 14, 2011.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.420 NMAC ERRDS, Regulation and Licensing Department.

Tania Maestas Date
Assistant Attorney General

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

SYNOPSIS

**1.18.516 NMAC ERRDS, Department of
Game and Fish**

1. Subject matter: 1.18.516 NMAC, Executive Records Retention and Disposition Schedule for the Department of Game and Fish. This is an amendment to 1.18.516 NMAC, ERRDS, Department of Game and Fish amending Section 9 and adding Section 39. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Center and Archives (New Mexico Commission of Public Records), and approved by the State Records Administrator, the Director of the Department of Game and Fish, and legal counsel for the Department of Game and Fish.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Department of Game and Fish. Persons and entities normally subject to the rules and regulations of the Department of Game and Fish may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Department of Game and Fish.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Department of Game and Fish. Any person or entity outside the covered geographical area that conducts business with or through the Department of Game and Fish may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State

Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: July 14, 2011.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.516 NMAC ERRDS, Department of Game and Fish.

Tania Maestas Date
Assistant Attorney General

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

SYNOPSIS

**1.18.630 NMAC ERRDS, Human
Services Department**

1. Subject matter: 1.18.630 NMAC, Executive Records Retention and Disposition Schedule for the Human Services Department. This is an amendment to 1.18.630 NMAC, ERRDS, Human Services Department amending Sections 3, 8, 9, 89 and 90 and adding Sections 91. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Center and Archives (New Mexico Commission of Public Records), and approved by the State Records Administrator, the Cabinet Secretary of the Human Services Department and legal counsel for the Human Services Department.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Human Services Department. Persons and entities normally subject to the rules and regulations of the Human Services Department may also be directly or indirectly affected by this rule.

3. Interests of persons affected: Interests include the records produced and maintained by the Human Services Department.

4. Geographical applicability: Geographical applicability is limited to areas within the State of New Mexico covered by the Human Services Department. Any person or entity outside the covered geographical

area that conducts business with or through the Human Services Department may also be affected by this rule.

5. Commercially published materials incorporated: The New Mexico Statutes Annotated 1978 is used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

6. Telephone number and address of issuing agency: New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

7. Effective date of this rule: July 14, 2011.

Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.630 NMAC ERRDS, Human Services Department.

Tania Maestas Date
Assistant Attorney General

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

SYNOPSIS

**1.18.954 NMAC ERRDS, Department of
Agriculture**

1. Subject matter: 1.18.954 NMAC, Executive Records Retention and Disposition Schedule for the Department of Agriculture. This is an amendment to 1.18.954 NMAC, ERRDS, Department of Agriculture amending Sections 1, 2, 3, 6, and 9 and adding Sections 201-204. The part name has also been amended. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Center and Archives (New Mexico Commission of Public Records), and approved by the State Records Administrator, the Cabinet Secretary of the Department of Agriculture, and legal counsel for the Department of Agriculture.

2. Persons affected: The persons affected are the record producing and record keeping personnel of the Department of Agriculture. Persons and entities normally subject to the

(5) "Experience review process" is the method by which appraiser experience is approved for credit toward licensure or certification. The process includes the review of the experience log submitted by the applicant; selection of three or more entries for review of the reports and any additional file memoranda; and approval of experience hours claimed and conformance of reports with applicable national uniform standards of professional appraisal practice (USPAP) standards.

F. Term starting with the letter 'F' is defined as follows: "FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and its amendments.

G. Terms starting with the letter 'G'. [RESERVED]

H. Terms starting with the letter 'H'. [RESERVED]

I. Terms starting with the letter 'I'. "IDECC" – international distance education certification center.

J. Terms starting with the letter 'J'. [RESERVED]

K. Terms starting with the letter 'K'. [RESERVED]

L. Terms starting with the letter 'L' are defined as follows.

(1) "Licensee" means an apprentice, license, residential certificate or general certificate.

(2) "Location" means the offices of the New Mexico real estate appraisers board will be located in Santa Fe, New Mexico.

M. Term starting with the letter 'M' is defined as follows: "module" is an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum. All modules identified in the required core curriculum for a specific classification must be successfully completed to satisfy the educational requirements as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

N. Term starting with the letter 'N' is defined as follows: "nonresident appraiser" for the purpose of 61-30-20 of the New Mexico Real Estate Appraisers Act, nonresident applicants; reciprocity, means an individual who holds a current apprentice registration, license, or certificate, and is in good standing, in another state.

O. Terms starting with the letter 'O'. [RESERVED]

P. Terms starting with the letter 'P' are defined as follows.

(1) "Practicing appraiser" means a state licensed or certified appraiser in good standing, engaged in performing appraisal assignments.

(2) "Primary business location" means the geographical location of a business where the supervisor and trainee

spend the majority of their time. A trainee may perform work only in areas where the supervising appraiser has competency in the geographical location and property type.

Q. Terms starting with the letter 'Q'. [RESERVED]

R. Term starting with the letter 'R' is defined as follows: "required core curriculum" is a set of appraisal subject matter (known as 'modules') which require a specified number of educational hours at each credential level; as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

S. Term starting with the letter 'S' is defined as follows; "supervisor" means a certified residential or certified general appraiser in good standing in the training jurisdiction and not subject to any disciplinary action within the last two (2) years that affects the supervisor's legal ability to engage in appraisal practice.

T. Term starting with the letter 'T' is defined as follows: "trainee" means an individual taught to become a state licensed or certified appraiser under the direct supervision of a supervising appraiser.

U. Term starting with the letter 'U' is defined as follows: "uniform standards of professional appraisal practice" (USPAP) means the uniform standard or the profession standard promulgated by the appraisal foundation and adopted by rules pursuant to the Real Estate Appraiser Act and deals with the procedures to be followed in which an appraisal, analysis, or opinion is communicated.

V. Terms starting with the letter 'V'. [RESERVED]

W. Term starting with the letter 'W' is defined as follows: "work file" is documentation necessary to support an appraiser's analyses, opinions, and conclusions.

X. Terms starting with the letter 'X'. [RESERVED]

Y. Terms starting with the letter 'Y'. [RESERVED]

Z. Terms starting with the letter 'Z'. [RESERVED]

[1/14/00; 16.62.1.7 NMAC - Rn & A, 16 NMAC 62.1.7, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 11/15/08; A, 10/16/2009; A, 08/21/2010; A, 7/10/2011]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.2 NMAC, Section 8, effective 7/10/2011.

16.62.2.8 APPRENTICE: A holder of an apprentice registration, but not a license or certificate, is authorized to prepare

appraisals of all types of real estate or real property, provided such appraisals are not described or referred to as "state licensed" or "state certified" and provided further, the apprentice appraiser does not assume or use any title, designation or abbreviation likely to create the impression that he/she is a state-licensed or state-certified real estate appraiser. Apprentices are not qualified to perform under FIRREA, Title XI. [Applicants] An applicant for apprentice real estate [appraisers] appraiser registration in the state of New Mexico must:

A. be a legal resident of the United States;

B. have reached the age of majority;

C. prove successful completion of real estate appraisal education of at least 75 board-approved classroom hours; real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principles and procedures in: basic appraisal principles - 30 hours; basic appraisal procedures - 30 hours; and the 15-hour national USPAP course or its equivalent;

D. comply with the competency rule of the national uniform standards of professional appraisal practice (USPAP);

~~D. E.~~ courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased and none may be taken on-line;

~~E. E.~~ demonstrate to the board that he/she is honest, trustworthy and competent;

~~F. G.~~ successful completion of a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

~~G. H.~~ pay the fees set out in 16.62.12.8 NMAC;

~~H. I.~~ submit a duly made application to the board office;

~~I. J.~~ declared supervisor.
[1/14/00; 16.62.2.8 NMAC - Rn & A, 16 NMAC 62.2.8, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 08/21/10; A, 7/10/2011]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.8 NMAC, Section 15, effective 7/10/2011.

16.62.8.15 APPROVAL OF COURSES:

A. All real estate appraisal courses except the appraisal qualifications board (AQB) approved fifteen (15) hour and seven (7) hour USPAP courses, must have prior approval by the board if they are to be approved for credit towards continuing education or qualifying education. Beginning January 1, 2008 all qualifying education courses for pre-apprentice, pre-licensing and pre-certification must have been approved through the AQB course approval program. The AQB approved fifteen (15) hour national USPAP course and the seven (7) hour national USPAP update course do not require prior approval by the board with proof that the course was taught by an AQB certified USPAP instructor who is also a residential or general certified appraiser. The course sponsor may certify in the form of a certificate provided to the student that the instructor meets the above board criteria.

B. All board approved real estate courses except the AQB approved fifteen (15) hour national USPAP course and the seven (7) hour national USPAP update course, as defined in Subsection A of this section accepted for pre apprentice, pre-licensing and pre-certification credit must: be a minimum length of at least fifteen (15) hours and include successful completion of an approved closed-book examination pertinent to that educational offering.

C. Application for course approval must be made to the board. No classes for credit may commence prior to board approval. The education advisory committee will review the application and make a recommendation to the board in accordance with 16.62.8.13 NMAC.

D. All course outlines approved by the board for pre-apprenticeship, pre-licensing, pre-certification or continuing education credit shall become the property of the board and the outlines shall be available to all those board approved sponsors wishing to teach said courses.

E. All existing courses are subject to periodic review by the board. The board may at any time change the approval status of any course.
[3/14/00; 16.62.8.15 NMAC - Rn & A, 16 NMAC 62.8.15, 09/13/2004; A, 11/25/2006; A, 01/16/2011; A, 7/10/2011]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.12 NMAC, Section 8, effective 7/10/2011.

16.62.12.8 FEES: All fees required under the Real Estate Appraiser Act or these regulations are non-refundable unless otherwise noted.

A. Application fee for apprenticeship is \$200, which includes the initial apprenticeship period.

B. Application fee for a license is \$300, which includes the initial licensing period.

C. Application fee for residential certification is \$300, which includes the initial licensing period.

D. Application fee for general certification is \$400, which includes the initial licensing period.

E. The fee for all examinations will be paid directly to the company who provides the exam.

F. The biennial renewal fee for apprentice appraisers is \$200. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$55 per year or portion of a year. Any renewal issued for less than six months will be charged \$30.

G. The biennial renewal fee for licensed appraisers is \$300. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$110 per year or portion of a year. Any renewal issued for less than six months will be charged \$55.

H. The biennial renewal fee for residential certified appraisers is \$300. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$110 per year or portion of a year. Any renewal issued for less than six months will be charged \$55.

I. The biennial renewal fee for general certified appraisers is \$355. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$155 per year or portion of a year. Any renewal issued for less than six months will be charged \$80.

J. The current fee for listing on the federal registry as charged by the appraisal subcommittee (ASC).

K. The application fee for a temporary practice certificate is [~~\$200~~] \$150.

L. The fee for replacement of apprentice, license or certificate is \$50.

M. The fee for a certificate

of good standing is \$25.

N. Administrative reinstatement fee is \$200.

O. Administrative late fee is \$100.00.

P. Administrative fees as follows:

(1) approved continuing education course is \$50;

(2) approval of continuing education sponsorship is \$75;

(3) licensee list is \$150;

(4) miscellaneous is \$25 up to a max of \$100.

[2/29/96; 16.62.12.8 NMAC - Rn, 16 NMAC 62.12.8, 09/13/2004; A, 08/21/2010; A, 01/16/2011; A, 7/10/2011]

NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.65.2 NMAC, Section 11, effective 7/10/2011.

16.65.2.11 EMPLOYEE IN CHARGE (EIC) REGISTRATION REQUIREMENTS: In order to serve as the EIC for a registered AMC, a designee shall:

A. not have had a license to practice as an appraiser refused, denied, canceled or revoked in this state or in any other state;

B. be of good moral character;

C. submit to a state background investigation; and

D. shall be responsible for:
(1) the selecting of appraisers for the performance of real estate appraisal services which includes: ensuring that each appraiser is licensed and provides a combined reporting system (CRS) identification number;

(2) have the responsibility of reviewing completed appraisals as part of the board file:

(a) shall ensure clerical review is conducted on all appraisals completed within the renewal period;

(b) shall randomly select a statistically significant number, but not less than five percent, all fractions rounded up, of outsource appraisal reviews on appraisals completed within the renewal period;

(c) outsource appraisal reviews shall be completed by an appraiser with licensure equal to or greater than that of appraiser that is being reviewed.

(3) maintaining required documentation as part of the board file.

E. successfully complete a board approved 15 hour USPAP course for registration and a board approved 7 hour

USPAP update for renewals; the appraisal qualifications board (AQB) approved 15 hour national USPAP course and the 7 hour national USPAP update course do not require prior approval by the board with proof that the course was taught by an AQB certified USPAP instructor who is also a residential or general certified appraiser; the course sponsor may certify in the form of a certificate provided to the student that the instructor meets AQB criteria; the instructor must be affiliated with a sponsor approved in at least one state of the United States. [16.65.2.11 NMAC - N, 10/16/09; A, 01/16/11; A, 7/10/2011]

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

14.7.6 NMAC, 2009 New Mexico Energy Conservation Code (filed 12-28-2010) repealed and replaced by 14.7.6 NMAC, 2009 New Mexico Energy Conservation Code, effective 8-1-11.

14.9.2 NMAC, 2009 New Mexico Mechanical Code (filed 12-28-2010) repealed and replaced by 14.9.2 NMAC, 2009 New Mexico Mechanical Code, effective 8-1-11.

14.10.4 NMAC, 2008 New Mexico Electrical Code (filed 12-28-2010) repealed and replaced by 14.10.4 NMAC, 2008 New Mexico Electrical Code, effective 8-1-11.

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

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 7 BUILDING CODES
GENERAL
PART 6 2009 NEW MEXICO
ENERGY CONSERVATION CODE**

14.7.6.1 ISSUING AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department. [14.7.6.1 NMAC - Rp, 14.7.6.1 NMAC, 8-1-11]

14.7.6.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after August 1, 2011, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that

date.

[14.7.6.2 NMAC - Rp, 14.7.6.2 NMAC, 8-1-11]

14.7.6.3 STATUTORY AUTHORITY: NMSA 1978 sections 60-13-9 and 60-13-44.

[14.7.6.3 NMAC - Rp, 14.7.6.3 NMAC, 8-1-11]

14.7.6.4 DURATION: Permanent.

[14.7.6.4 NMAC - Rp, 14.7.6.4 NMAC, 8-1-11]

14.7.6.5 EFFECTIVE DATE: August 1, 2011 unless a later date is cited at the end of a section.

[14.7.6.5 NMAC - Rp, 14.7.6.5 NMAC, 8-1-11]

14.7.6.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for energy conservation in construction in New Mexico.

[14.7.6.6 NMAC - Rp, 14.7.6.6 NMAC, 8-1-11]

14.7.6.7 DEFINITIONS: See 14.5.1 NMAC, General Provisions and chapter 2 of the IECC as amended in 14.7.6.10 NMAC.

[14.7.6.7 NMAC - Rp, 14.7.6.7 NMAC, 8-1-11]

14.7.6.8 ADOPTION OF THE 2009 NEW MEXICO ENERGY CONSERVATION CODE:

A. This rule adopts by reference the 2009 international energy conservation code (IECC), as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2009 international energy conservation code.

C. This rule is to be applied in conjunction with each of the other 2009 New Mexico building codes, including the NMCBC, NMRBC, NMPC, NMMC and the NMEC.

[14.7.6.8 NMAC - Rp, 14.7.6.8 NMAC, 8-1-11]

14.7.6.9 CHAPTER 1 - ADMINISTRATION:

A. Section 101 - General.

(1) 101.1 Title. Delete this section of the IECC and substitute: this rule shall be known as 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code (NMECC).

(2) 101.2 Scope. Delete this section of the IECC and see 14.7.6.2 NMAC, Scope.

(3) 101.3 Intent. Delete this section of the IECC and see 14.7.6.6 NMAC,

Objective.

(4) 101.4 Applicability. See this section of the IECC.

(5) 101.5.1 Compliance materials. Delete this section of the IECC and substitute the following: the code official shall be permitted to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code, such as ComCheck, ResCheck, and worksheet or trade-off sheets from the *New Mexico energy conservation code residential applications manual*.

B. Section 102 Alternate Materials-Method of Construction, Design for Insulating Systems. See this section of the IECC.

C. Section 103 - Construction Documents. Delete this section of the IECC and see 14.5.2 NMAC, Permits.

D. Section 104 Inspections. Delete this section of the IECC and see 14.5.3 NMAC, Inspections.

E. Section 105 Validity. Delete this section of the IECC and see 14.5.1 NMAC, General Provisions.

F. Section 106 Reference Standards. All references in the IECC to the international building code shall be deemed references to 14.7.2 NMAC, the 2009 New Mexico Commercial Building Code (NMCBC). All references to the international residential code shall be deemed references to 14.7.3 NMAC, the 2009 New Mexico Residential Building Code (NMRBC). All references to the international plumbing code shall be deemed references to 14.8.2 NMAC, the 2009 New Mexico Plumbing Code (NMPC). All references to the international mechanical code shall be deemed references to 14.9.2 NMAC, the 2009 New Mexico Mechanical Code (NMMC). All references to the ICC or international electrical code shall be deemed references to 14.10.4 NMAC, the 2008 New Mexico Electrical Code (NMEC). All references to the international energy conservation code shall be deemed references to 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code (NMECC). All references to the international fuel gas code are deemed references to the NMMC or the LP gas standards found at 19.15.40 NMAC, and NMSA 1978 70-5-1 et seq.

G. Section 107 Fees.

(1) 107.1 Fees. Delete this section of the IECC and see 14.5.5 NMAC Fees.

(2) 107.2 Schedule of Permit Fees. Delete this section of the IECC and see 14.5.5.10 NMAC Permit Fees.

(3) 107.3 Work Commencing Before a Permit Issuance. Delete this section of the IECC and see 14.5.2.16 NMAC Failure to Obtain Permit.

(4) 107.4 Related Fees. Delete this section of the IECC and see 14.5.5

NMAC Fees.

(5) 107.5 Refunds. Delete this section of the IECC and See 14.5.5 NMAC Fees.

H. 108 Stop Work Order. Delete this section of the IECC and see 14.5.3 Inspections.

I. 109 Board of Appeals. Delete this section of the IECC and See 14.5.1 General Provisions. [14.7.6.9 NMAC - Rp, 14.7.6.9 NMAC, 8-1-11]

14.7.6.10 CHAPTER 2 - DEFINITIONS: See this chapter of the IECC except as provided below.

A. Section 201.1 Scope. See this section of the IECC and add the following: If the same term is defined in the New Mexico construction codes and in the IECC, the term shall have the meaning given it in the New Mexico construction codes.

B. Section 201.2 Interchangeability. See this chapter of the IECC.

C. Section 201.3 Terms defined in other codes. Delete this section of the IECC and substitute with the following: if a term is not defined in this code but is defined in a New Mexico construction code, the term shall have the meaning given it in the New Mexico construction code.

D. Section 201.4 Terms not defined. See this chapter of the IECC.

E. Section 202 General Definitions. See this section of the IECC except as provided below.

(1) Conditioned space. Delete the text of this definition and replace with the following: An area, room or space within a building that is provided with heating, cooling, or combined heating and cooling by equipment or systems capable of maintaining, through design or heat loss/gain, **50 degrees fahrenheit** (10 degrees celsius) during the heating season and **85 degrees fahrenheit** (29 degrees celsius) during the cooling season, or an area, room or space that communicates directly with a conditioned space.

(2) Duct installation. Ducts shall be installed in accordance with Chapter 6 and Chapter 17 of the New Mexico Mechanical Code and current applicable standards.

(3) Indirectly conditioned space. Add the following definition. Enclosed space within a building thermal envelope that is not mechanically heated or cooled.

(4) Multi scene controls. Systems for controlling power to multiple groups of lights requiring only a few controls.

(5) Residential building. Delete the text of this definition and replace with the following: For this code, includes detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means

of egress and their accessory structures and R-3 buildings, as well as R-2 and R-4 buildings three stories or less in height above grade.

(6) Unconditioned space. Add the following definition: Space within a building that is not mechanically heated or cooled and is outside the building thermal envelope.

(7) Vapor retarder class. Add the following definition: a measure of a material or assembly's ability to limit the amount of moisture that passes through that material or assembly. Vapor retarder class shall be defined using the desiccant method of ASTM E96 as follows:

(a) class I: 0.1 perm or less;
(b) class II: > 0.1 perm <1.0 perm;
(c) class III: > 1.0 perm <10 perm.

[14.7.6.10 NMAC - Rp, 14.7.6.10 NMAC, 8-1-11]

14.7.6.11 CHAPTER 3 - CLIMATE ZONES: See this Chapter of the IECC

[14.7.6.11 NMAC - Rp, 14.7.6.11 NMAC, 8-1-11]

14.7.6.12 CHAPTER 4 - RESIDENTIAL ENERGY EFFICIENCY. See this Chapter of the IECC.

[14.7.6.12 NMAC - Rp, 14.7.6.12 NMAC, 8-1-11]

14.7.6.13 CHAPTER 5 - COMMERCIAL ENERGY EFFICIENCY: See this Chapter of the IECC.

[14.7.6.13 NMAC - Rp 14.7.6.19 NMAC, 8-1-11]

14.7.6.14 CHAPTER 6 - REFERENCED STANDARDS: See this Chapter of the IECC.

[14.7.6.14 NMAC - Rp 14.7.6.25 NMAC, 8-1-11]

HISTORY OF 14.7.6 NMAC:

Pre NMAC History: None.

History of Repealed Material:

14.7.6 NMAC, 2003 New Mexico Energy Conservation Code (filed 5-27-04) repealed 1-7-04.

14.7.6 NMAC, 2006 New Mexico Energy Conservation Code (filed 8-16-2007) repealed 1-28-11.

14.7.6 NMAC, 2009 New Mexico Energy Conservation Code (filed 12-28-2010) repealed 8-1-11.

NMAC History:

14.7.6 NMAC, 2003 New Mexico Energy Conservation Code (filed 5-27-04) replaced by 14.7.6 NMAC, 2006 New Mexico Energy

Conservation Code, effective 1-1-08.

14.7.6 NMAC, 2006 New Mexico Energy Conservation Code (filed 8-16-2007) replaced by 14.7.6 NMAC, 2009 New Mexico New Mexico Energy Conservation Code, effective 1-28-11.

14.7.6 NMAC, 2009 New Mexico Energy Conservation Code (filed 12-28-2010) replaced by 14.7.6 NMAC, 2009 New Mexico Energy Conservation Code, effective 8-1-11.

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

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 9 MECHANICAL
CODES
PART 2 2009 NEW MEXICO
MECHANICAL CODE**

14.9.2.1 ISSUING AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department. [14.9.2.1 NMAC - Rp, 14.9.2.1 NMAC, 8-1-11]

14.9.2.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after August 1, 2011, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date. [14.9.2.2 NMAC - Rp, 14.9.2.2 NMAC, 8-1-11]

14.9.2.3 STATUTORY AUTHORITY: NMSA 1978 Sections 60-13-9 and 60-13-44. [14.9.2.3 NMAC - Rp, 14.9.2.3 NMAC, 8-1-11]

14.9.2.4 DURATION: Permanent. [14.9.2.4 NMAC - Rp, 14.9.2.4 NMAC, 8-1-11]

14.9.2.5 EFFECTIVE DATE: August 1, 2011, unless a later date is cited at the end of a section. [14.9.2.5 NMAC - Rp, 14.9.2.5 NMAC, 8-1-11]

14.9.2.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for the installation, repair, and replacement of mechanical systems including equipment, appliances, fixtures, fittings and appurtenances including ventilating, heating, cooling, air conditioning, and refrigeration systems, incinerators, and other energy related systems in New Mexico.

[14.9.2.6 NMAC - Rp, 14.9.2.6 NMAC, 8-1-11]

14.9.2.7 DEFINITIONS: See 14.5.1 NMAC, General Provisions and chapter 2 of the 2009 uniform mechanical code (UMC) as amended in 14.9.2.10 NMAC.

[14.9.2.7 NMAC - Rp, 14.9.2.7 NMAC, 8-1-11]

14.9.2.8 ADOPTION OF THE 2009 UNIFORM MECHANICAL CODE:

A. This rule adopts by reference the 2009 uniform mechanical code, as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2009 uniform mechanical code.

C. This rule is to be applied in conjunction with 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code.

[14.9.2.8 NMAC - Rp, 14.9.2.8 NMAC, 8-1-11]

14.9.2.9 CHAPTER 1 ADMINISTRATION.

A. Part 1 - General.

(1) 101.0 Title. Delete this section of the UMC and substitute: This code shall be known as 14.9.2 NMAC, the 2009 New Mexico Mechanical Code (NMMC).

(2) 102.0 Purpose. Delete this section of the UMC and see 14.9.2.6 NMAC.

(3) 103.0 Scope. Delete this section of the UMC and see 14.9.2.2 NMAC.

(4) 104.0 Application to existing mechanical systems. See this section of the UMC.

(5) 105.0 Alternate materials and methods of construction. Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.

(6) 106.0 Modifications. Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.

(7) 107.0 Tests. See this section of the UMC.

B. Part II - Organization and enforcement.

(1) 108.0 Powers and duties of the authority having jurisdiction.

(a) 108.1 General. Delete this section of the UMC and see CILA.

(b) 108.2 Deputies. Delete this section of the UMC and see CILA Sections 60-13-8 and 60-13-41 and NMSA 1978 Section 9-16-7.

(c) 108.3 Right of entry. Delete this section of the UMC and see CILA Section 60-13-42.

(d) 108.4 Stop orders. Delete this section of the UMC and see 14.5.2 NMAC, Permits.

(e) 108.5 Authority to disconnect utilities in emergencies. Delete this section

of the UMC and see CILA Section 60-13-42.

(f) 108.6 Authority to condemn equipment. Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.

(g) 108.7 Connection after order to disconnect. Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.

(h) 108.8 Liability. Delete this section of the UMC and see CILA Section 60-13-26.

(i) 108.9 Cooperation of other officials and officers. Delete this section of the UMC.

(2) 109.0 Unsafe equipment. Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.

(3) 110.0 Board of appeals. Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.

(4) 111.0 Violations. Delete this section of the UMC and see CILA Section 60-13-1 et seq., and 14.5.3 NMAC, Inspections.

C. Part III - Permits and inspections.

(1) 112.0 Permits. See 14.5.2 NMAC, Permits.

(2) 113.0 Application for permit. Delete this section of the UMC and see 14.5.2 NMAC, Permits.

(3) 114.0 Permit issuance. Delete this section of the UMC and see 14.5.2 NMAC, Permits.

(4) 115.0 Fees. Delete this section of the UMC and see 14.5.5 NMAC, Fees.

(5) 116.0 Inspections. Delete this section of the UMC and see 14.5.3 NMAC, Inspections.

(6) 117.0 Connection approval. Delete this section of the UMC and see 14.5.2 NMAC, Permits.

(7) Table 1.1 Mechanical permit fees. Delete this table from the UMC and see 14.5.5 NMAC, Fees.

D. 116.6 Reinspection. Delete this section of the UMC and see 14.5.5.14 (G) NMAC.

[14.9.2.9 NMAC - Rp, 14.9.2.9 NMAC, 8-1-11]

14.9.2.10 CHAPTER 2 DEFINITIONS: See this chapter of the UMC except as provided below.

A. 203.0 Authority having jurisdiction. Delete the text of this definition and substitute: The authority having jurisdiction is the construction industries division (CID) and the bureau chief of the mechanical and plumbing bureau of CID.

B. 214.0 Listed and listing. See this definition in the UPC and add the following provision at the end of the definition: A manufacturer may select the independent certification organization of its choice to certify its products, provided

that the certification organization has been accredited by the American national standards institute (ANSI), or another certification organization that CID has approved in writing.

[14.9.2.10 NMAC - Rp, 14.9.2.10 NMAC, 8-1-11]

14.9.2.11 CHAPTER 3 GENERAL REQUIREMENTS: See this chapter of the UMC except as provided below.

A. 305.0 Automatic control devices. See this section of the UMC and 14.7.6 NMAC.

B. 311.0 Heating and cooling air system. See this section of the UMC except as provided below.

(1) 311.1 Source. See this section of the UMC

(2) 311.2 Air filters. See this section of the UMC except delete the exception.

(3) 311.3 Prohibited source. See this section of the UMC except delete the text of location (5) and replace with the following: a closet, bathroom, laundry room, toilet room or kitchen and add location (7) to read as follows: where it will pick up objectionable odors, fumes, or flammable vapors.

[14.9.2.11 NMAC - Rp, 14.9.2.11 NMAC, 8-1-11]

14.9.2.12 CHAPTER 4 VENTILATION AIR SUPPLY: See this

chapter of the UMC and add the following material to section 405.0 Evaporative cooling systems: "Barometric relief dampers shall be installed on all new residential evaporative cooling systems to allow conditioned air from occupied spaces to exit the occupied space through a discreet opening in the ceiling, allowing the required air change to pass through the attic space to the outdoors. The authority having jurisdiction shall determine whether relief dampers shall be required on retrofits. Barometric relief dampers shall not be required on flat roof construction. Water saving or water management pumps shall be installed on all new and replaced evaporative coolers."

[14.9.2.12 NMAC - Rp, 14.9.2.12 NMAC, 8-1-11]

14.9.2.13 CHAPTER 5 EXHAUST SYSTEMS: See this chapter of the UMC except as provided below. **511.3 Replacement air.** See this section of the UMC except add the following: windows and doors shall not be used for the purpose of providing replacement air. The exhaust and replacement air systems shall be connected by an electrical interlocking switch. When using equipment that is not listed for make-up air, a device to sense continued air movement within the replacement air plenum shall be

installed initiating a complete system shut-down if air-flow is interrupted.
[14.9.2.13 NMAC - Rp, 14.9.2.13 NMAC, 8-1-11]

14.9.2.14 CHAPTER 6 DUCT SYSTEMS: See this chapter of the UMC except as follows.

A. Section 604.7. Location of ducts. Duct work shall not be installed in exterior walls or exterior to the thermal envelope unless the insulation of the duct work meets or exceeds the insulation requirement applicable to the exterior walls of the building.

B. Section 604.3 Factory-made air ducts. See this section of the UMC and add the following text to the end of the third paragraph: The use of flexible duct shall be limited to supply- and return-air run-outs of not more than 12 feet in length. Flexible duct shall not be used for the main supply or return-air plenum.

C. Section 605.0 Insulation of ducts. See this section of the UMC except as follows: Delete **Tables 6, 6A, and 6B. Minimum duct insulation R values,** and replace with the following:

(1) Residential duct:

(a) Supply ducts in attics shall be insulated to a minimum of R-8.

(b) All other ducts shall be insulated to a minimum R-6.

(2) Commercial duct:

(a) All supply and return air ducts and plenums located in unconditioned spaces shall be insulated to a minimum of R-5.

(b) All supply and return air ducts and plenums located outside the building shall be insulated to a minimum of R-8.

(c) All supply and return air ducts and plenums located within a building envelope assembly shall be separated from the building exterior or unconditioned or exempt spaces by a minimum of R-8 insulation.

(3) Exceptions:

(a) Buried ducts for combination systems will be required to be insulated to a minimum of R-3.5.

(b) On commercial ducts: when located within the equipment.

(c) On commercial ducts: when the design temperature difference between the interior and exterior of the duct or plenum does not exceed 15 degrees F (8C).

D. Section 604.2. Metal ducts. See this section of the UMC and add the following to the last sentence of the second paragraph, "and be installed so as to support the weight of the concrete during encasement."

E. Section 609.0 Automatic shutoffs: See this section of the UMC and add the following to the exception: (6) Automatic shutoffs are not required on evaporative coolers that derive all of their air

from outside the building.

[14.9.2.14 NMAC - Rp, 14.9.2.14 NMAC, 8-1-11]

14.9.2.15 CHAPTER 7 COMBUSTION AIR: See this chapter of the UMC.

[14.9.2.15 NMAC - Rp, 14.9.2.15 NMAC, 8-1-11]

14.9.2.16 CHAPTER 8 CHIMNEYS AND VENTS: See this chapter of the UMC.

[14.9.2.16 NMAC - Rp, 14.9.2.16 NMAC, 8-1-11]

14.9.2.17 CHAPTER 9 INSTALLATION OF SPECIFIC EQUIPMENT: See this chapter of the UMC except as provided below.

A. Section 904.10.3 Access to equipment on roofs.

(1) **904.10.1** See this section of the UMC.

(2) **904.10.2** See this section of the UMC except after the words "in height" add the following: except those designated as R-3 occupancies.

B. 907.2 Installation.

See this section of the UMC except add the following: Installation of gas logs in solid fuel burning fireplaces. Approved gas logs may be installed in solid fuel burning fireplaces, provided.

(1) The gas log is installed in accordance with the manufacturer's installation instructions.

(2) If the fireplace is equipped with a damper, it shall be permanently blocked open by welding or cutting a hole of sufficient size to prevent spillage of combustion products into the room. On eight (8) inch and smaller flues, the damper shall be removed.

(3) The minimum flue passageway shall not be less than 1 square inch per 2000 Btu/h input.

(4) Gas logs shall be equipped with a pilot and listed safety shutoff valve.

(5) The use of flexible gas connections shall not be permitted within a firebox, unless it is part of the listed gas log assembly.

(6) Factory built fireplaces shall be approved for installation of gas logs and provided with a means of installing the gas piping.

(7) All gas outlets located in a barbecue or fireplace shall be controlled by an approved separating valve located in the same room and outside the hearth, but not less than six (6) feet from such outlets.

C. Section 928.2 Location. See this section of the UMC except add the following to the end: unlisted wall furnaces shall be installed with clearances to combustible material of not less than

eighteen (18) inches (460 mm).

[14.9.2.17 NMAC - Rp, 14.9.2.17 NMAC, 8-1-11]

14.9.2.18 CHAPTER 10 STEAM AND HOT WATER BOILERS: See this chapter of the UMC.

[14.9.2.18 NMAC - Rp, 14.9.2.18 NMAC, 8-1-11]

14.9.2.19 CHAPTER 11 REFRIGERATION: See this chapter of the UMC.

[14.9.2.19 NMAC - Rp, 14.9.2.19 NMAC, 8-1-11]

14.9.2.20 CHAPTER 12 HYDRONICS: See this chapter of the UMC except as provided below.

A. 1201.2.8.3 Pressure test. See this section of the UMC except delete the first sentence and substitute: piping shall be tested with a hydrostatic pressure or an air test of not less than 1.5 times operating pressure.

B. 1201.3.1.1. PEX tubing. See this section of the UMC except add the following: tubing shall be manufactured with an approved oxygen diffusion barrier.

[14.9.2.20 NMAC - Rp, 14.9.2.20 NMAC, 8-1-11]

14.9.2.21 CHAPTER 13 FUEL PIPING: See this chapter of the UMC except as provided below.

A. 1309.5.2.3 Copper and brass pipe shall not be used. Aluminum alloy pipe shall not be used with gases corrosive to such material.

B. 1312.1.2 Protection against damage. Delete the text of subsection (A) of this section of the UMC, cover requirements, and substitute: Underground piping systems shall be installed with a minimum of 18 inches (460 mm) of cover. Where 18 inches (460 mm) of cover cannot be provided, the pipe shall be installed in conduit or bridged (shielded).

C. 1312.9.3 Emergency shutoff valves. See this section of the UMC except delete the following: the emergency shutoff valves shall be plainly marked as such and their locations posted as required by the authority having jurisdiction. See this is section of the UMC except add the following to the end: For purposes of isolation and safety, an additional gas shut off shall be installed downstream of the serving supplier gas meter prior to any distribution of gas into the gas piping system

D. 1312.13 Electrical bonding and grounding. Delete this section of the UMC and see the New Mexico Electrical Code (NMEC).

E. 1315.0 Liquefied petroleum gas facilities and piping. Delete

this section of the UPC and substitute the following: Liquefied petroleum gas facilities shall comply with 19.15.40 NMAC, liquefied petroleum gas standards, and NMSA 1978 70-5-1 et seq., liquefied and compressed gasses.

[14.9.2.21 NMAC - Rp, 14.9.2.21 NMAC, 8-1-11]

14.9.2.22 CHAPTER 14 PROCESS PIPING: See this chapter of the UMC.

[14.9.2.22 NMAC - Rp, 14.9.2.22 NMAC, 8-1-11]

14.9.2.23 CHAPTER 15 SOLAR SYSTEMS: See this chapter of the UMC.

[14.9.2.23 NMAC - Rp, 14.9.2.23 NMAC, 8-1-11]

14.9.2.24 CHAPTER 16 STATIONARY POWER PLANTS: See this chapter of the UMC.

[14.9.2.24 NMAC - Rp, 14.9.2.24 NMAC, 8-1-11]

14.9.2.25 RESIDENTIAL ENERGY EFFICIENCY. See this Chapter of the 2009 IECC.

[14.9.2.25 NMAC - Rp, 14.9.2.25 NMAC, 8-1-11]

14.9.2.26 COMMERCIAL ENERGY EFFICIENCY: See this Chapter of the 2009 IECC.

[14.9.2.26 NMAC - Rp, 14.9.2.26 NMAC, 8-1-11]

14.9.2.27 CHAPTER 17 STANDARDS: See this chapter of the UMC and add the following: ACCA manual S - 2003.

[14.9.2.27 NMAC - Rp, 14.9.2.27 NMAC, 8-1-11]

14.9.2.28 APPENDICIES: See this section of the UMC.

[14.9.2.28 NMAC - Rp, 14.9.2.28 NMAC, 8-1-11]

HISTORY OF 14.9.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with state records center and archives under: CIC MB 68-2, 1964 New Mexico Plumbing Code, filed 1/23/68.

CIC MB 70-8, 1970 Plumbing Code of New Mexico, filed 4/29/70.

CIC MB 71-4, 1970 Plumbing Code of New Mexico, filed 6/8/71.

CIC MB 74-9, 1973 Uniform Plumbing Code, filed 11/20/74.

CIC 76-1, 1976 Uniform Plumbing Code, filed 5/4/76.

CIC MB 80-5, 1979 Uniform Plumbing Code, filed 4/24/80.

MB-UPC-82-1, 1982 Uniform Plumbing

Code, filed 11/4/82.

MB-UPC-85-1, 1985 Uniform Plumbing Code, filed 10/1/85.

MB-UPC-88-1, 1988 Uniform Plumbing Code, filed 12/15/88.

MB-UPC-91-1, 1991 Uniform Plumbing Code, filed 7/28/92.

CIC MB 68-3, 1966 New Mexico Gas Code, filed 1/23/68.

CIC MB 70-7, 1970 Natural Gas Code of New Mexico, filed 4/29/70.

CIC MB 71-3, 1970 Natural Gas Code of New Mexico, filed 6/8/71.

CIC-74-8, 1973 Uniform Mechanical Code, filed 11/20/74.

CIC 76-4, 1976 Uniform Mechanical Code, filed 11/24/76.

CID MB 80-3, 1979 Uniform Mechanical Code, filed 4/23/80.

MB-UMC-82-1, 1982 Uniform Mechanical Code, filed 11/4/82.

MB-UMC-85-1, 1985 Uniform Mechanical Code, filed 10/1/85.

MB-UMC-88-1, 1988 Uniform Mechanical Code, filed 12/15/88.

MB-UMC-91-1, 1991 Uniform Mechanical Code, filed 7/28/92.

CIC 77-3, 1976 New Mexico Uniform Solar Energy Code, 2/26/77.

CID MB-80-6, 1979 Uniform Solar Energy Code, 4/24/80.

MB-USEC-82-1, 1982 Uniform Solar Energy Code, filed 11/4/82.

MB-USEC-85-1, 1985 Uniform Solar Energy Code, 12/23/85.

MB-USEC-88-1, 1988 Uniform Solar Energy Code, 12/15/88.

MB-USEC-91-1, 1991 Uniform Solar Energy Code, 7/28/92.

CIC-75-1, 1973 Uniform Swimming Pool Code, Section 1.7, 10/31/75.

CIC-76-3, 1976 Uniform Swimming Pool Code, 7/27/76.

CIC MB 80-4, 1979 Uniform Swimming Pool Code, filed 4/23/80.

MB-USPC-82-1, 1982 Uniform Swimming Pool Code, 11/4/82.

MB-USPS and HTC-85-1, 1985 Uniform Swimming Pool, Spa and Hot Tub Code, 12/23/85.

MB-USPS and HTC-88-1; 1988 Uniform Swimming Pool, Spa and Hot Tub Code, 12/15/88.

MB-USPS and HTC-91-1, 1991 Uniform Swimming Pool, Spa and Hot Tub Code, 7/28/92.

CID-MB-NMP&M 91-1, 1991 New Mexico Plumbing and Mechanical Code, 7/7/92.

History of Repealed Material: 14 NMAC 9.2, 1997 New Mexico Plumbing and Mechanical Code (filed 10/30/98), repealed 7/1/04.

14.9.2 NMAC, 2003 New Mexico Mechanical Code (filed 5/27/04), repealed 1/7/04.

14.9.2 NMAC, 2006 New Mexico

Mechanical Code (filed 08/16/07), repealed 1/28/11.

14.9.2 NMAC, 2009 New Mexico Mechanical Code (filed 12/28/10), repealed 8/1/11.

Other History:

CID-MB-NMP&M 91-1, 1991 New Mexico Plumbing and Mechanical Code, (filed 7/7/92), replaced by 14 NMAC 9.2, 1997 New Mexico Plumbing and Mechanical Code, effective 12-31-98.

14 NMAC 9.2, 1997 New Mexico Plumbing and Mechanical Code (filed 10-30-98) (that applicable portion) replaced by 14.9.2 NMAC, 2003 New Mexico Mechanical Code, effective 7/1/04.

14.9.2 NMAC, 2003 New Mexico Mechanical Code (filed 5/27/04) replaced by 14.9.2 NMAC, 2006 New Mexico Mechanical Code, effective 1/1/08.

14.9.2 NMAC, 2006 New Mexico Mechanical Code (filed 08/16/07) replaced by 14.9.2 NMAC, 2009 New Mexico Mechanical Code, effective 1/28/11.

14.9.2 NMAC, 2009 New Mexico Mechanical Code (filed 12/28/10) replaced by 14.9.2 NMAC, 2009 New Mexico Mechanical Code, effective 8/1/11.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

TITLE 14 HOUSING AND CONSTRUCTION CHAPTER 10 ELECTRICAL CODES PART 4 2008 NEW MEXICO ELECTRICAL CODE

14.10.4.1 ISSUING AGENCY: The Construction Industries Division of the Regulation and Licensing Department.

[14.10.4.1 NMAC - Rp 14.10.4.1 NMAC, 8-1-11]

14.10.4.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after July 1, 2008, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.

[14.10.4.2 NMAC - Rp, 14.10.4.2 NMAC, 8-1-11]

14.10.4.3 STATUTORY AUTHORITY: NMSA 1978 Section 60-13-9.

[14.10.4.3 NMAC - Rp, 14.10.4.3 NMAC, 8-1-11]

14.10.4.4 DURATION: Permanent.

[14.10.4.4 NMAC - Rp, 14.10.4.4 NMAC, 8-1-11]

14.10.4.5 EFFECTIVE DATE: August 1, 2011, unless a later date is cited at the end of a section.

[14.10.4.5 NMAC - Rp, 14.10.4.5 NMAC, 8-1-11]

14.10.4.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for electrical wiring, as defined in CILA Section 60-13-32, in New Mexico.

[14.10.4.6 NMAC - Rp, 14.10.4.6 NMAC, 8-1-11]

14.10.4.7 DEFINITIONS: [Reserved]

14.10.4.8 ADOPTION OF THE 2008 NATIONAL ELECTRICAL CODE:

A. This rule adopts by reference the 2008 national electrical code (NEC), as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2008 national electrical code.

C. This rule is to be applied in conjunction with 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code.

[14.10.4.8 NMAC - Rp, 14.10.3.8 NMAC, 8-1-11]

14.10.4.9 ADMINISTRATION AND ENFORCEMENT:

A. Inspectors. See 14.6.5 NMAC, Inspectors.

B. Disconnect orders. See CILA Section 60-13-42.

C. Stop orders. See 14.5.3 NMAC, Inspections.

D. Unsafe wiring. See 14.5.1 NMAC, General Provisions.

E. Electrical plan review. See 14.5.2 NMAC, Permits.

F. Electrical permit. See 14.5.2 NMAC, Permits.

G. Electrical inspections.
(1) Inspections required: See 14.5.3 NMAC, Inspections.

(2) Electrical customer-owned distribution system requirements. See 14.5.3 NMAC, Inspections.

[14.10.4.9 NMAC - Rp, 14.10.4.9 NMAC, 8-1-11]

14.10.4.10 ARTICLE 90 INTRODUCTION. See this article of the NEC.

[14.10.4.10 NMAC - Rp 14.10.4.10 NMAC, 8-1-11]

14.10.4.11 CHAPTER 1 General.

A. Article 100 - Definitions. See this article of the NEC

B. Article 110 -

Requirements for Electrical Installations. See this article of the NEC except as provided below.

(1) Section 110.2 Approval. See this section of the NEC and add the following:

(a) product listing and labeling - electrical wiring, equipment or material approval shall be based on listing and labeling by a nationally recognized testing laboratory recognized by the federal occupational safety and health administration;

(b) field evaluation - electrical wiring, equipment or material that is not listed and labeled, but for which a (UL) safety standard exists may be approved upon certification by a nationally recognized testing laboratory recognized by the federal occupational safety and health administration or by a field evaluation body accredited by the international accreditation service, inc.

(c) engineer certification - electrical wiring, equipment or material for which a (UL) safety standard does not exist may be approved upon certification by an electrical engineer licensed to practice in New Mexico; such a certification will not be valid unless based on a verification of the manufacturer's safety and performance test data for the product..

(2) Section 110.21. Marking. See this section of the NEC and add: all equipment used on circuits over 300 volts between conductors shall have a warning sign either on or adjacent to the equipment. Warning signs shall be made in accordance with ANSI Z535 environmental and safety signs. The language shall read:

(a) for voltages over 300 volts but less than 600 volts: "480 VOLTS". (Label dimensions shall be 1" x 4"); and

(b) for voltages over 600 volts and there are exposed parts: "DANGER - HIGH VOLTAGE - KEEP OUT".

(3) Section 110.26 Spaces about electrical equipment.

(a) 110.26 (A) Working space. See this section of the NEC and add: Disconnects that do not provide over-current, overload, short circuit, or ground fault protection are not required to maintain the dimensions of 110.26(A)(1), (A)(2) and (A)(3) where adequate space is not readily available and the disconnect is permanently labeled "INADEQUATE WORKING SPACE-DO NOT WORK ON WHILE ENERGIZED".

(b) 110.26 (E) Headroom. See this section of the NEC and add: Exception No. 2: In underground water well pump enclosures, service equipment or panel boards that do not exceed 200 amperes, operating at 250 volts or less and only feeding equipment associated with the water well enclosure, shall be permitted in spaces where the headroom is less than six and one half feet (6 1/2 ft.) but greater than five feet

(5 ft.) provided the enclosure is supplied with a removable lid, that when removed would allow a minimum of six and one half feet (6 1/2 ft.) headroom.

C. Article 210. Branch circuits. See this article of the NEC except as provided below.

(1) Section 210.11.

(a) 210.11 (A) Number of branch circuits. See this section of the NEC and add: In dwelling occupancies, circuits for general purpose receptacles shall be limited to a maximum of ten (10) current consuming outlets. Single and duplex receptacle outlets are considered to be one current consuming outlet. Exception: Circuits serving only lighting loads may be calculated per article 220 of the national electrical code.

(b) 210.11 (B) Load evenly proportioned among branch circuits. See this article of the NEC.

(c) 210.11 (C) Dwelling units. See this section of the NEC except as provided below.

(i) Small appliance branch circuits. See this section of the NEC and add: not more than four (4) current consuming outlets shall be connected to these circuits. Single and duplex receptacle outlets are considered to be one current consuming outlet. Exception: small appliance circuits that supply only dining area receptacles may serve not more than six (6) receptacle outlets.

(ii) Laundry branch circuits. Delete the text of this section of the NEC and substitute: in addition to the number of branch circuits required by other parts of this section, at least one additional 20-ampere branch circuit shall be provided to supply the laundry receptacle outlet. Such circuits shall have no other outlets.

(2) Section 210.19 Conductors - Minimum ampacity and size. See this section of the NEC and add the following to subsection (A) Branch circuits not more than 600 volts. (1) General: see this section of the NEC and add: conductors for branch circuits shall be sized to prevent excessive voltage drop. Conductors of 15 ampere 120V branch circuits supplying general-purpose receptacle outlets shall be not less than 12 AWG.

(3) Section 210.52 Dwelling unit receptacle outlets.

(a) 210.52 (A) General provisions. (2) **Wall space.** See this section of the NEC and add: exception: free-standing cabinets designed to be used as an eating or drinking bar where stools or chairs are pulled up to a counter top which extends at least one (1) foot from the front of the cabinet, shall not be considered as wall space.

(b) 210.52 (G) Basement and garages. See this section of the NEC and add: receptacle outlets must be installed a

minimum of eighteen (18) inches above finished floor, in attached or detached garages.

(4) Section 210.70 Lighting outlets required.

(a) 210.70 (A) (2) Dwelling units - Additional locations. See this section of the NEC and add a new subsection as follows: (d) on single family dwellings at least one wall switch, located within five (5) feet from each entrance or exit or automatic lighting control such as a motion detector shall be installed to control exterior illumination.

(b) 210.70 (A) (3) Dwelling units - Storage or equipment spaces. See this section of the NEC and add: at least one (1) switched lighting outlet shall be installed in all accessible attics and crawl spaces adjacent to the usual point of entry.

(c) 210.70 (C) Other than dwelling units. See this section of the NEC and add: at least one (1) switched lighting outlet shall be installed in all accessible attics and crawl spaces adjacent to the usual point of entry.

D. Article 215. Feeders. Section 215.1. Scope. See this section of the NEC and add: approved wiring methods for feeders: nonmetallic-sheathed cable types NM, NMC and NMS (Article 334), and service entrance cable type SER (Article 338), shall be permitted to be used for feeders in dwelling units providing that the cables shall not pass through or under any other dwelling unit(s). Underground feeder and branch circuit cable type UF cable (Article 340) shall be permitted to be used underground for any occupancy, and indoors only in accordance with nonmetallic-sheathed cable (Article 334) providing that the cable shall not pass through or under any other dwelling unit(s).

E. Article 225. Outside branch circuits and feeders. See this article of the NEC except as follows.

(1) Section 225.19 Clearance from buildings for conductors of not over 600 volts nominal-above roofs. (A) Above roofs. See this section of the NEC but delete exception no. 2 in its entirety.

(2) Section 225.32 Location. See this section of the NEC except as follows.

(a) Add the following provision: the disconnecting means shall be installed at a readily accessible location. Where the disconnecting means is located outside the building or structure served, the disconnecting means enclosure shall be installed within ten (10) feet from the building or structure and visible, or on the exterior wall of the building or structure served. Where the disconnecting means is installed inside the building or structure served, the disconnecting means enclosure shall be located within forty eight (48) inches from where the feeder conductor raceway enters the building or structure.

(b) Delete the text of exception no. 1 and substitute: for industrial installations under single management, where documented safe switching procedures are established and maintained for disconnection, the disconnecting means shall be permitted to be located elsewhere on the premises.

F. Article 230. Services. See this article of the NEC except as provided below.

(1) Section 230.24 Clearances. (A) Above roofs. Delete exception no. 2 in its entirety.

(2) Section 230.28. Service masts as supports. See this section of the NEC and add: where a service mast is used for the support of service drop conductors, it shall be a minimum two inch (2") rigid metal conduit, intermediate metal conduit or comply with local utility requirements.

(3) Section 230.31 Size and rating. (A) General. See this section of the NEC and add: where the underground service lateral is customer owned, the service lateral conductors shall be sized to prevent excessive voltage drop. The maximum voltage drop on the service lateral conductors shall not exceed five percent (5%). For the purpose of this calculation, the ampacity shall be based on the calculated demand load of the building or structure served. Customer owned includes all non-utility owned or operated service lateral conductors.

(4) Section 230.43. Wiring methods for 600 volts, nominal, or less. See this section of the NEC but delete subsection (1) open wiring on insulators, and subsection (6), Electrical nonmetallic tubing (ENT).

(5) Section 230.54 Overhead service locations. See this section of the NEC and add a new section as follows: (H) overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6" x 6") pressure-treated timber or equivalent round poles (minimum 6" diameter crown) installed to a depth not less than four (4) feet below finish grade.

(6) Section 230.70 Service equipment - disconnecting means.

(a) 230.70 General. (A) Location. See this section of the NEC and add: the disconnecting means for each occupant of a multiple occupancy building shall be grouped at a common location.

(b) 230.70 General. (A) Location. (1) Readily accessible location. Delete the text of this section of the NEC and substitute: the service disconnecting means shall be installed at a readily accessible location. Where the disconnecting means is located outside the building or structure, the disconnecting means enclosure shall be located immediately adjacent to the meter enclosure. Where the disconnecting means

enclosure is located outside the building or structure and within ten (10) feet from the building or structure, it shall not be considered a separate structure. Where the meter enclosure is located on the exterior wall of the building or structure, the service disconnecting means enclosure shall be installed at a readily accessible location and within forty eight (48) inches from the meter enclosure. Where the disconnecting means is located inside the building, the disconnecting means enclosure shall be installed at a readily accessible location within forty eight (48) inches from where the service conductor raceway enters the building or structure. Exception: bushing current transformer meter installations that are associated with the utility transformer are not required to be located in close proximity to the disconnecting means enclosure.

(7) Section 230.72 Grouping of service disconnects. (A) General. See this section of the NEC and add: all building or structure disconnects of each service shall be grouped at one location and shall be separated by the least practical distance, not to exceed an overall distance of twenty (20) feet.

G. Article 250 - Grounding and bonding. See this article of the NEC except as provided below.

(1) Section 250.50 Grounding electrode system. See this section of the NEC and add: on new construction a concrete encased electrode shall be considered available and installed in compliance with NEC 250.52(A) (3). If a concrete encased electrode is not present, then at least 20 feet of No. 2 bare copper in direct contact with the earth at a depth below the earth's surface of not less than thirty (30) inches shall be installed in a continuous trench that is at least twenty (20) feet in length, augmented with a minimum of two (2), eight (8) foot grounds rods spaced a minimum of six (6) feet apart.

(2) Section 250.52 (A) Grounding electrodes. (5) Rod and pipe electrodes. See this section of the NEC but delete subsection (a) in its entirety.

(3) Section 250.52 Grounding electrodes. (B) (1) Not permitted for use as grounding electrodes. Delete the text of this section of the NEC and substitute: Gas piping shall not be used as a grounding conductor or electrode. This does not preclude the bonding of metallic piping to a grounding system.

(4) Section 250.53 Grounding electrode system installation. (C) Bonding jumper. See this section of the NEC and add: Grounding electrode bonding jumpers shall be protected from physical damage. When a bonding jumper conductor is buried to provide physical protection, a minimum cover of 24 inches shall be provided in accordance with NEC Table 300.5 column 1

all locations not specified below.

(5) Section 250.56 Resistance of rod, pipe and plate electrodes. Delete the text of this section of the NEC and substitute: a single electrode consisting of a rod or plate shall be augmented by one additional electrode of any of the types specified by 250.52 (A) (2) through (A) (7). Where multiple rod or plate electrodes are installed to meet the requirements of this section, they shall be not less than six (6) feet apart. Exception: A single electrode consisting of a rod or plate may be used on temporary construction services rated 200 amperes or less.

(6) Section 250.66 Size of alternating-current grounding electrode conductor. (B) Connections to concrete-encased electrodes. See this section of the NEC and add: the grounding electrode conductor shall not be smaller than #4 AWG copper.

(7) Section 250.104. Bonding of piping systems and exposed structural steel. (B) Other metal piping. See this section of the NEC and add: CSST gas piping systems shall be bonded to the electrical service grounding electrode system at the point where the gas service enters the building. The bonding jumper shall not be smaller than (6) AWG copper wire.

(8) Section 250.106. Lightning protection systems. See this section of the NEC and add: Where a lightning protection system is installed, the bonding of the gas piping system shall be in accordance with NFPA 780, standard for installation of lightning protection systems.

(9) Section 250.118. Types of equipment grounding conductors. See this section of the NEC and add the following new subsection: (15) an equipment grounding conductor shall be installed in all branch circuit and feeder raceways on or above a roof. The equipment grounding conductor shall be sized in accordance with table 250.122.

H. Article 300. Wiring methods. See this article of the NEC except as provided below.

(1) Section 300.11 Securing and supporting. See this section of the NEC except as provided below.

(a) 300.11(A) Secured in place. See this section of the NEC and add: independent support wires shall be limited to support of flexible wiring methods from the last means of support or junction box for connections within an accessible ceiling to luminaire(s) or equipment served.

(b) 300.11 (A) (1). Fire rated assemblies. Delete the text of this section of the NEC and substitute: the ceiling support system shall be permitted to support listed junction boxes and/or support brackets that have been tested as part of a fire-rated assembly.

(c) 300.11 (A) (2). Non-fire rated assemblies. Delete the text of the exception and substitute: the ceiling support system shall be permitted to support listed junction boxes and/or support brackets where installed in accordance with the ceiling system manufacturer's instructions.

(2) Section 300.14. Length of free conductors at outlets, junctions and switch points. Delete the text of this section of the NEC and substitute: at least six (6) inches of free conductor, measured from the point in the box where it emerges from its raceway or cable sheath, shall be left at each outlet, junction, and switch point for splices or the connection of luminaire (fixtures) or devices. Where the opening of an outlet, junction, or switch point is less than eight (8) inches in any dimension, each conductor shall be long enough to extend at least six (6) inches outside of the opening.

I. Article 310. Conductors for general wiring. See this article of the NEC and add the following provision to section 310.2 (B). Conductor material: the use of aluminum current carrying conductors shall be of the AA-8000 series or equivalent and shall be limited to size 8 AWG or larger. Exception: the equipment-grounding conductor shall be limited to size 10 AWG or larger if in a listed cable assembly.

J. Article 314. Outlet, device, pull, and junction boxes; conduit bodies; fittings; and handhole enclosures. See this article of the NEC except delete the exception from subsection 314.27(a) outlet boxes-boxes at luminaire (lighting fixture) outlets.

K. Article 334. Nonmetallic-Sheathed Cable: Types NM, NMC and NMS.

(1) Section 334.10 Uses permitted. See this section of the NEC but delete subsection (3) in its entirety.

(2) Section 334.12 Uses not permitted. (A) Types NM, NMC, and NMS. See this section of the NEC and add the following subsection: (11) type NM, NMC, or NMS shall not be installed in buildings, or structures such as stores, professional offices, motels, hotels, and other occupancies classified as commercial or industrial. Exception: apartment houses classified as R-2.

L. Article 340. Underground feeder and branch circuit cable: type UF. See this article of the NEC except as provided below.

(1) Section 340.10 Installation - Uses permitted. See this section of the NEC and add the following new subsections:

(a) (8) type UF cable shall be permitted to be imbedded in adobe construction;

(b) (9) type UF cable, or an approved electrical raceway shall be installed

on straw bale residential construction.

(2) Section 340.12 Installation - Uses not permitted. See this section of the NEC and add the following new subsection: (12) Type UF cable shall not be installed in buildings or structures such as stores, professional offices, motels, hotels, or other occupancies classified as commercial or industrial.

M. Article 352 Rigid Polyvinyl Chloride Conduit: Type PVC. See this article of the NEC and add the following to section 352.10 uses permitted. (F) Exposed: PVC conduit, type schedule 40 shall not be used where the raceway is exposed and under eight (8) feet from finished floor or grade.

N. Article 358 Electrical Metallic Tubing: Type EMT. See this article of the NEC and add the following section to 358.12 uses not permitted: (7) electrical metallic tubing shall not be permitted to be installed underground or in concrete slabs or walls which are in contact with the earth.

O. Article 394 Concealed knob and tube wiring. See this article of the NEC and add the following to section 394.12 uses not permitted: concealed knob and tube wiring shall not be permitted to be installed except by special written permission from the electrical bureau.

P. Article 422. Appliances. See this article of the NEC and add the following to section 422.19. evaporative cooling units: where an evaporative cooler is installed, a listed raceway shall be installed during rough-in from the control point to the evaporative cooler location. The raceway shall contain an equipment-grounding conductor from the control point outlet box to the junction box at the unit. The equipment grounding conductor shall be sized in accordance with table 250.122.

Q. Article 550. Mobile Homes, Manufactured Homes and Mobile Home Parks. See this article of the NEC except as provided below.

(1) Section 550.32 Service equipment. (A) Mobile home service equipment. Delete the text of this section of the NEC and substitute the following: the mobile home service equipment shall be located adjacent to the mobile home and not mounted in or on the mobile home. The service equipment shall be located in sight from and not more than one hundred (100) feet from the exterior wall of the mobile home it serves. The service equipment shall be permitted to be located elsewhere on the premises, provided that a disconnecting means marked "suitable for use as service equipment" is located in sight from and not more than thirty (30) feet from the exterior wall of the mobile home it serves. Grounding at the disconnecting means shall

be in accordance with 250.32.

(2) Section 550.32 Service equipment. See this section of the NEC and add the following new subsections.

(a) (H) Required receptacle. A 125 volt 15 or 20 amp receptacle outlet shall be installed with ground fault circuit interruption protection at each remote mobile home or manufactured home service equipment, or the local external disconnecting means permitted in 550.32 (A).

(b) (I) Overhead services. Overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6" x 6") pressure-treated timber or equivalent round poles (minimum 6" diameter crown) installed to a depth not less than four (4) feet below finish grade.

R. Article 800. Communications Circuits. See this article of the NEC and add the following to Section 800.154: applications of listed communications wires and cables and communication raceways: (H) dwelling unit communications circuits. Dwelling unit communications cable assemblies shall be a minimum of 4-pair No. 24 AWG conductors. Each 4 pair cable shall serve not more than three telephone outlets. Conductors shall terminate in a listed box or on a terminal block near the electrical service or location of telephone service. Any exterior wall penetration shall be installed in a listed raceway.

[14.10.4.11 NMAC - Rp, 14.10.4.11 NMAC, 8-1-11]

14.10.4.12 S M O K E DETECTORS. For smoke detectors, refer to the latest adopted edition of the building code. Smoke detectors installed in new single family dwellings shall be served by a single source. When two (2) or more smoke detectors are required in a dwelling unit, they shall be interconnected with a multi-conductor cable assembly. Location and power back-up requirement shall be in accordance with the latest adopted edition of the building code.

[14.10.4.12 NMAC - Rp, 14.10.4.12 NMAC, 8-1-11]

14.10.4.13 ACCESSIBILITY REQUIREMENTS FOR PERSONS WITH DISABILITIES. Add: Electrical device installation shall comply with accessibility codes adopted for New Mexico. [14.10.4.13 NMAC - Rp, 14.10.4.13 NMAC, 8-1-11]

14.10.4.14 NIGHT SKY PROTECTION ACT. Outdoor lighting shall comply with the Night Sky Protection Act.

[14.10.4.14 NMAC - Rp, 14.10.4.15 NMAC, 8-1-11]

14.10.4.15 RESIDENTIAL ENERGY EFFICIENCY. See Chapter 4 of 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code. [14.10.4.15 NMAC - Rp, 14.10.4.14 NMAC, 8-1-11]

14.10.4.16 COMMERCIAL ENERGY EFFICIENCY. See chapter 5 of 14.7.6 NMAC, the 2009 New Mexico Energy Conservation Code. [14.10.4.16 NMAC - Rp, 14.10.4.15 NMAC, 8-1-11]

HISTORY OF 14.10.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records, state records center and archives under: CIC 71-1, 1971 National Electrical Code, filed 12-01-71
CIC71-2, 1972 New Mexico Electrical Code, filed 12-1-71
CID 78-1, 1978 New Mexico Electrical Code, filed 01-31-78
CID EB 81-3, State of New Mexico Electrical Code Revised to July 24, 1981, Technical Provision based on the 1981 National Electrical Code and Related Codes and Standards, filed 11-24-81
CID EB 84-1, State of New Mexico Electrical Code, filed 05-11-84
CID NMEB 93-1, State of New Mexico Electrical Code 1993, filed 02-25-93.

History of Repealed Material:

14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electric Code (filed 01-15-97), repealed 07-01-99.
14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 06-01-99), repealed 12-01-00.
14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 10-16-2000), repealed 7-30-02.
14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 7-30-02) repealed 7-1-04.
14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 05-27-04) - part name later changed to 2002 State of New Mexico Electrical Code (filed 10-18-04) both repealed 07-01-05.
14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code (filed 05-04-2005) repealed 7-1-08.
14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 1-24-2008) repealed 8-1-11.

Other History:

CID NMEB, State of New Mexico Electric Code (filed 2-25-93) replaced by 14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electric Code, effective 01-31-97.
14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electric Code (filed 01-15-97) replaced by 14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 07-01-99.
14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 06-01-99) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 12-01-00.
14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 10-16-2000) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 07-30-02.
14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 07-01-02) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 07-01-04.
14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 05-27-04) and part name later changed to "2002 State of New Mexico Electrical Code" (filed 10-18-04) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code, effective 07-01-05.
14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code (filed 05-04-2005) was replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code, effective 7-1-08.
14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 1-24-2008) was replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code, effective 8-1-11.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.8.2 NMAC, Section 11, effective 08-01-11.

**14.8.2.11 CHAPTER 3
GENERAL REGULATIONS:** See this chapter of the UPC except as provided below.

A. 301.2 Alternate

materials and methods of construction equivalency. Delete this section of the UPC and see 14.5.1 NMAC.

B. 301.3 Flood hazard resistance. See this section of the UPC.

C. 301.4 Alternative engineered design. See this section of the UPC except as provided below.

(1) 301.4.1 Design criteria. See this section of the UPC and 14.5.2 NMAC permits.

(2) 301.4.2 Permit application. Delete this section of the UPC and see 14.5.2 NMAC permits.

(3) 301.4.3 Technical data. See this section of the UPC.

(4) 301.4.4 Design documents. See this section of the UPC and 14.5.2 NMAC permits.

(5) 301.4.5 Design approval. Delete this section of the UPC and see 14.5.2 NMAC permits.

(6) 301.4.6 Design review. Delete this section of the UPC and see 14.5.2 NMAC permits.

(7) 301.4.7 Inspection and testing. Delete this section of the UPC and see 14.5.2 NMAC permits and 14.5.3 NMAC inspections.

D. 313. Protection of piping, materials and structures. See this section of the UPC except [as provided below] add the following section:

~~[(1) 313.6. All residential hot water piping, including circulating supply and return piping shall be insulated to a minimum R-2. All commercial hot water piping, including circulating supply and return piping shall be insulated to a minimum R-4. A means of manual shut off must be installed on all circulating pumps.~~

(2) 313.13 Protection against damage. Plastic materials for water service piping outside underground shall have a blue insulated copper tracer wire or other approved conductor installed adjacent to the piping. Access shall be provided to the tracer wire or the tracer wire shall terminate above ground at each end of the nonmetallic piping. The tracer wire shall be not less than 18 AWG and the insulation type shall be suitable for direct burial.

[14.8.2.11 NMAC - Rp, 14.8.2.11 NMAC, 1-28-11, A, 8-1-11]

NEW MEXICO SECRETARY OF STATE

TITLE 1 G E N E R A L GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 34 VOTING SYSTEMS STORAGE, CUSTODY AND MAINTENANCE

1.10.34.1 ISSUING AGENCY:
Office of the Secretary of State.
[1.10.34.1 NMAC – N, 10/1/2011]

1.10.34.2 SCOPE: This rule applies to all counties in New Mexico using state or county-owned voting systems in the conduct of elections held pursuant to the provisions of the New Mexico Election Code (Chapter 1, Articles 1 through 24, NMSA 1978.
[1.10.34.2 NMAC – N, 10/1/2011]

**1.10.34.3 S T A T U T O R Y
AUTHORITY:** Election Code, Section 1-2-1 NMSA 1978; Section 1-9-7.6, NMSA 1978.
[1.10.34.3 NMAC – N, 10/1/2011]

1.10.34.4 D U R A T I O N :
Permanent.
[1.10.34.4 NMAC – N, 10/1/2011]

1.10.34.5 EFFECTIVE DATE:
October 1, 2011 unless a later date is cited at the end of a section.
[1.10.34.5 NMAC – N, 10/1/2011]

1.10.34.6 O B J E C T I V E :
The purpose of this rule is to provide specifications for the storage, custody and maintenance of voting systems used by New Mexico counties.
[1.10.34.6 NMAC – N, 10/1/2011]

1.10.34.7 DEFINITIONS:
A. “Adequate security”
means security commensurate with the risk and the magnitude of harm resulting from the loss, misuse, unauthorized access to, or modification of, information.

B. “Election officials”
means a group of people associated with election administration, including county clerk’s staff, precinct board members, voting system technicians and those responsible for the installation, operation and maintenance of voting systems.

C. “Primary election ”
means the election held in each county of the state on the first Tuesday after the first Monday in June of each even-numbered year.

D. “Storage facility”
means an enclosed, temperature-controlled

structure, or portion of a structure, providing for secure storage and retrieval of state or county-owned voting systems.

E. “Voting system” means a system, whether state or county owned, as defined in Section 1-9-1 NMSA 1978, as it may be from time to time amended. A voting system does not include storage bins.

F. “Voting system technician” means any person who is trained and certified to program, inspect, properly store and troubleshoot voting systems.
[1.10.34.7 NMAC – N, 10/1/2011]

1.10.34.8 S E C U R I T Y REQUIREMENTS:

A. The storage facility used for county storage of voting systems shall employ a sign-in and sign-out sheet to document each individual entering or leaving the facility, to include election officials.

B. Unless located in a secure, locked area in the county clerk’s office, the storage facility used for county storage of voting systems:

(1) shall be provided with an intrusion detection alarm system and a video surveillance system meeting ISO or ANSI standards; and

(2) shall be provided with exterior lighting of sufficient intensity to afford observers immediate recognition of illegal acts such as breaking and entering or unauthorized removal of equipment during non-working hours; switches for exterior lights shall be installed only in the interior of the building; exterior lights shall be protected from damage or replaced if damaged within 72 (seventy-two) hours of such occurrence; and

(3) shall have access doors for the storage facility constructed of materials that will render forcible entry extremely difficult in a period of 5 minutes;

(4) in addition, the county clerk shall limit unescorted access to the storage facility to election officials, individuals authorized by the county clerk and those individuals permitted access under the provisions of the New Mexico Election Code (Chapter 1, Articles 1 through 24, NMSA 1978); and

(5) the county clerk and county clerk staff shall have unlimited access to the storage facility and access shall not be controlled by any third party.

C. During transit from the storage facility to or from a polling place, vehicles transporting voting systems shall not be left unlocked if unattended. Moving companies contracted with by a county for the transport of voting systems shall be insured and bonded.

D. The storage facility shall include a locked and restricted access area for removable storage media devices, which will preserve the integrity of the devices.

If the voting system's removable storage media devices are to be programmed outside of the storage facility, chain of custody documentation shall be preserved by the county clerk.

E. The board of county commissioners shall be responsible for the costs of the security requirements associated with properly storing state or county-owned voting systems in the custody of the county clerk.

[1.10.34.8 NMAC – N, 10/1/2011]

1.10.34.9 ENVIRONMENTAL REQUIREMENTS:

A. Voting systems shall be stored at a temperature range from 32° to 100° fahrenheit with humidity levels from 40-55%, except for brief seasonal variations.

B. The storage facility shall be free of debris, dust, vermin and vibration, not to exceed federal standards for voting systems.

C. Voting systems shall be provided with dust and moisture proof covers.

D. Voting systems which are stacked for storage shall not exceed manufacturers' height recommendations for stacking.

E. The storage facility shall be provided with sufficient electrical power to permit simultaneous battery charging of all voting systems stored at the facility.

F. The board of county commissioners shall be responsible for the costs of the environmental requirements associated with properly storing state-owned voting systems in the custody of the county clerk.

[1.10.34.9 NMAC – N, 10/1/2011]

1.10.34.10 MAINTENANCE REQUIREMENTS:

A. County clerks and county voting machine technicians shall be responsible for keeping all machines free of dust, adjustment of wheels and screws on the outside of the voting system and performing other maintenance as trained and directed by the secretary of state.

B. County clerks and county voting machine technicians shall be responsible for ensuring that all machines are stored with a full battery charge and recharged according to the schedule recommended by the manufacturer or vendor.

C. County clerks and county voting machine technicians shall be responsible for ensuring that all removable storage media devices have a sufficient supply of replacement batteries.

D. The secretary of state shall contract with a company authorized to perform intensive maintenance between 100 and 45 days prior to each primary election.

[1.10.34.10 NMAC – N, 10/1/2011]

HISTORY OF 1.10.34 NMAC:
[RESERVED]

NEW MEXICO SECRETARY OF STATE

This is an amendment to 12.6.2 NMAC, Sections 7, 10, 17, 21, 28, 32, 133, 199, 202 and 212, effective 6/30/2011.

12.6.2.7 DEFINITIONS: The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the UCC shall have the respective meanings accorded such terms in the UCC.

A. "Amendment" means a UCC document that purports to amend the information contained in a financing statement. Amendments include assignments, continuations and terminations.

B. "Assignment" is an amendment that purports to reflect an assignment of all or a part of a secured party's power to authorize an amendment to a financing statement.

C. "Continuation" means an amendment that purports to continue the effectiveness of a financing statement.

D. "Correction statement" means a UCC document that purports to indicate that a financing statement is inaccurate or wrongfully filed.

E. "File number" means the unique identifying information assigned to a financing statement by the filing officer for the purpose of identifying the financing statement and UCC documents relating to the financing statement in the filing officer's information management system. For a financing statement with an initial financing statement filed prior to July 1, 2001, the file number consists of a 2 digit year, 2 digit month, 2 digit day, and a 3 digit sequential number (yyymmddXXX). For a financing statement with an initial financing statement filed after June 30, 2001 but before March 26, 2003, the file number consists of a 4 digit year, 2 digit month, 2 digit day, 3 digit sequential number, and 2 digit check number (yyyymmddXXXcc). For a financing statement with an initial financing statement filed on or after March 26, 2003, the number includes three segments; the year of filing expressed as a four digit number, followed by a unique seven digit number assigned to financing statement by the filing office and ending with a one digit verification alphabetic character assigned by the filing office but mathematically derived from the numbers in the first two segments. The same file format will be used for amendments

as initial filing statements, including the verification alphabetic character. Though the verification alphabetic character is not as important here, it guarantees the integrity of the file number. The filing number bears no relation to the time of filing and is not an indicator of priority.

F. "Filing office" and "filing officer" mean the secretary of state's office, operations division.

G. "Filing officer statement" means a statement entered into the filing office's information system to correct an error by the filing office.

H. "Financing statement" means a record or records composed of an initial financing statement and any filed record(s) relating to the initial financing statement.

I. "Individual" means a human being, or a decedent in the case of a debtor that is such decedent's estate.

J. "Initial financing statement" means a UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by Sections 55-9-512, 55-9-513, 55-9-514 or 55-9-518 NMSA 1978.

K. "Organization" means a legal person who is not an individual as defined in item H of this section.

L. "Remitter" means a person who tenders a UCC document to the filing office for filing, whether the person is a filer or an agent of a filer responsible for tendering the document for filing. "Remitter" does not include a person responsible merely for the delivery of the document to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

M. "Secured party of record" means, with respect to a financing statement, a person whose name is provided as the name of a secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Chapter 55, Article 9 Section 514(a) NMSA 1978, the assignee named in the initial financing statement is the secured party of record with respect to the financing statement. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 55-9-514(b) NMSA 1978, the assignee named in the amendment is a secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

N. "Termination" means

an amendment intended to indicate that the related financing statement has ceased to be effective with respect to the secured party authorizing the termination.

O. "UCC" means the Uniform Commercial Code as adopted in this state and in effect from time to time.

P. "UCC document" means an initial financing statement, an amendment, an assignment, a continuation, a termination or a correction statement. The word "document" in the term "UCC document" shall not be deemed to refer exclusively to paper or paper-based writings; it being understood that UCC documents may be expressed or transmitted electronically or through media other than such writings. (Note: this definition is used for the purpose of these rules only. The use of the term "UCC document" in these rules has no relation to the definition of the term "document" in Section 55-9-102(a)(30) NMSA 1978.)

[12.6.2.7 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011]

12.6.2.10 FILING OFFICE IDENTIFICATION. In addition to the promulgation of these rules, the filing office will disseminate information of its location, mailing address, telephone and fax numbers, and its internet and other electronic "addresses" through usual and customary means.

A. Addresses to file.

(1) Via postal service: Office of the Secretary of State, State Capitol North - Suite 300, 325 Don Gaspar, Santa Fe, New Mexico [87503] 87501.

(2) Via courier service: Office of the Secretary of State, State Capitol North - Suite 300, 325 Don Gaspar, Santa Fe, New Mexico 87501.

B. On-line information service. The filing office offers on-line information services on its web site at www.sos.state.nm.us.

[12.6.2.10 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011]

12.6.2.17 FILING FEES. The fees to file UCC documents as set forth in Chapter 55, Article 9, Section 525 NMSA 1978 are as follows.

A. For UCC documents communicated in writing on a form prescribed by the filing office, the fee for filing and indexing a UCC document of one, two or three pages is \$20.00. For a UCC document of at least 4 pages but no more than 25 pages, the fee is \$40.00. If the total number of pages exceeds 25 pages, the fee is \$100.00 plus \$5.00 for each page which exceeds 25 pages. For filings transmitted electronically, the fee is \$10.00 if the record consists of fifteen thousand or fewer bytes. If the record exceeds fifteen thousand bytes,

the fee is \$20.00.

B. For UCC documents communicated in writing but not on a form prescribed by the filing office, the fee is double those identified in Subsection A of this section for a record of the same length.

C. Additional fees. In addition to the fees set forth in Subsections A and B of this section, a fee of \$100.00 ~~shall be paid for an initial financing statement that indicates that it is filed in connection with a public-finance transaction, a fee of \$100.00~~ shall be paid for an initial financing statement that indicates that it is filed in connection with a manufactured-home transaction, and a fee of \$100.00 shall be paid for an initial financing statement that indicates that a debtor is a transmitting utility.

D. A correction statement is treated as an amendment to an initial financing statement and is subject to the fees set forth in Subsections A, B and C of this section.

E. Copies. In addition to the fees identified in this section which are established by statute, the fee for copies of UCC records ordered from and provided by the filing office is \$1.00 per page. ~~[Copies of UCC records filed after June 30, 1998 are available on the filing office web site at no charge.]~~

[12.6.2.17 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011]

12.6.2.21 PUBLIC RECORDS SERVICES. Public records services are provided on a non-discriminatory basis to any member of the public on the terms described in these rules. The following methods are available for obtaining copies of UCC documents and copies of data from the UCC information management system.

A. Individually identified documents. Copies of individually identified UCC documents are available in the following forms.

(1) By written request identifying the file number (plus microfilm number for records filed prior to January 1, 2001). The filing office will provide a form to request copies of filings on its web site.

(2) The filing office will provide scanned images of UCC records filed after June 30, 1998 on its web site at no charge.

(3) Bulk copies of documents. Bulk copies of UCC documents are available in the following forms.

~~[(a) Records filed prior to January 1, 2001 are available on microfilm at \$50.00 per roll.]~~

~~[(b)]~~ (a) TIF images of records filed after June 30, 1998 are available on CD-rom at \$100.00 per disc.

~~[(c)]~~ (b) Indexed data are available on disc at \$.10 per record.

B. Data from the information management system. A list

of available data elements from the UCC information management system, and the file layout of the data elements, is available from the filing officer upon request. Data from the information management system is available as follows.

(1) Full extract. A bulk data extract of information from the UCC information management system is available on a monthly basis.

(2) Update extracts. Updates of information from the UCC information management system are available on a monthly basis.

(3) Format. Extracts from the UCC information management system are available on CD-rom or on floppy disc for small data extracts.

[12.6.2.21 NMAC - N, 7/1/2001; A, 6/30/2011]

12.6.2.28 GROUNDS FOR REFUSAL OF UCC DOCUMENT. The following grounds are the sole grounds for the filing officer's refusal to accept a UCC document for filing. As used herein, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

A. Debtor name and address. An initial financing statement or an amendment that purports to add a debtor shall be refused if the document fails to include a legible debtor name and address for a debtor, in the case of an initial financing statement, or for the debtor purporting to be added in the case of such an amendment. If the document contains more than one debtor name or address and some names or addresses are missing or illegible, the filing officer shall index the legible name and address pairings, and provide a notice to the remitter containing the file number of the document, identification of the debtor name(s) that was (were) indexed, and a statement that debtors with illegible or missing names or addresses were not indexed.

B. Additional debtor identification. An initial financing statement or an amendment adding one or more debtors shall be refused if the document fails to identify whether each named debtor (or each added debtor in the case of such an amendment) is an individual or an organization, if the last name of each individual debtor is not identified, or if, for each debtor identified as an organization, the document does not include in legible form the organization's type, state of organization and organization number (if it has one) or a statement that it does not have one. Debtors identified as individuals are not required to include a social security number. Social security numbers are provided voluntarily

and will be ~~[made available]~~ redacted on copies of UCC records.

C. Secured party name and address. An initial financing statement, an amendment purporting to add a secured party of record, or an assignment, shall be refused if the document fails to include a legible secured party (or assignee in the case of an assignment) name and address. If the document contains more than one secured party (or assignee) name or address and some names or addresses are missing or illegible, the filing officer shall refuse the UCC document.

D. Lack of identification of initial financing statement. A UCC document other than an initial financing statement shall be refused if the document does not provide a file number of a financing statement in the UCC information management system that has not lapsed.

E. Identifying information. A UCC document that does not identify itself as an amendment or identify an initial financing statement to which it relates, as required by Chapter 55, Article 9, Sections 512, 513, 514 or 518 NMSA 1978, is an initial financing statement.

F. Timeliness of continuation. A continuation shall be refused if it is not received during the six month period concluding on the day upon which the related financing statement would lapse. In the event that the day upon which the related financing statement would lapse falls on a day on which the filing office is not open, the last day is then the first business day immediately preceding the day that the office is closed. A postmark stamped on an envelope by the U.S. postal service does not cause timely filing of the continuation if the continuation is received by the filing office after the last day upon which the related financing statement would lapse.

(1) First day permitted. The first day on which a continuation may be filed is the date of the month corresponding to the date upon which the financing statement would lapse, six months preceding the month in which the financing statement would lapse. If there is no such corresponding date during the sixth month preceding the month in which the financing statement would lapse, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse, although filing by certain means may not be possible on such date if the filing office is not open on such date.

(2) Last day permitted. The last day on which a continuation may be filed is the date upon which the financing statement lapses.

G. Fee. A document shall be refused if the document is accompanied by less than the full filing fee tendered by

a method described in 12.6.2.19 NMAC. In the event that more than one filing is submitted with one payment for all filings and one or more filings are refused pursuant to this rule, the filing office will file the accepted filings and receipt the payment received (if the payment is not less than the full filing fee for the total of the accepted filings) for the filings which were acceptable without a refund or credit for the payment due for the unaccepted filing(s) unless the filer demonstrates that the rejected filings should not have been refused under this rule. Otherwise, the filer must correct and resubmit the rejected filing(s) with a new payment.

H. Means of communication. UCC documents communicated to the filing office by a means of communication not authorized by the filing officer for the communication of UCC documents shall be refused.

I. Non-UCC filings not accepted. Filings (such as those pursuant to the Farm Products Secured Interest Act or federal tax liens) which are not included in Chapter 55, Article 9 NMSA 1978 (Chapter 139, Laws of 2001) but submitted on forms prescribed in 12.6.2.14 NMAC will be refused and returned without processing.

J. Transmitting utility debtors. For records that contain a debtor identified as a transmitting utility, the filing officer may require proof of the debtor's authority to operate as a transmitting utility. [12.6.2.28 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011]

12.6.2.32

ACKNOWLEDGMENT. The filing officer shall submit to the filer or remitter a filing acknowledgment which contains the file number of the filing, the date and time of filing, the lapse date, and the names and addresses for debtors and secured parties as data entered by the filing officer. ~~[For UCC documents not filed in paper or paper-based form the filing officer shall communicate to the filer or remitter the information in the filed document, the file number and the date and time of filing.]~~

[12.6.2.32 NMAC - N, 7/1/2001; A, 7/1/2003; A, 6/30/2011]

12.6.2.133 INITIAL FINANCING STATEMENT. Upon the filing of an initial financing statement the status of the parties and the status of the financing statement shall be as follows.

A. Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC document names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

B. Status of debtor. The status of a debtor named on the document shall be active and shall continue as active until one year after the financing statement lapses.

C. Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless the initial financing statement indicates that it is filed with respect to a ~~[public-financing transaction or a]~~ manufactured-home transaction, in which case the lapse date shall be thirty years from the file date, or if the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains active until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

[12.6.2.133 NMAC - N, 7/1/2001; A, 6/30/2011]

12.6.2.199 P O L I C Y STATEMENT.

Sections 12.6.2.199 NMAC through 12.6.2.215 NMAC contain rules describing the filing procedures of the filing officer upon and after receipt of a UCC document. It is the policy of the filing officer to ~~[fite]~~ promptly file a document that conforms to these rules. Except as provided in these rules, data are transferred from a UCC document to the information management system exactly as the data are set forth in the document. No effort is made to detect or correct errors of any kind.

[12.6.2.199 NMAC - N, 7/1/2001; A, 6/30/2011]

12.6.2.202 LAPSE DATE AND TIME.

A lapse date is calculated for each initial financing statement (unless the debtor is indicated to be a transmitting utility). The lapse date is the same date of the same month as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if a timely continuation statement is filed, but if the initial financing statement indicates that it is filed with respect to a ~~[public-finance transaction or a]~~ manufactured-home transaction, the lapse date is the same date of the same month as the filing date in the thirtieth year after the filing date. The lapse takes effect at midnight at the end of the lapse date. The relevant anniversary for a February 29 filing date shall be the March 1 in the fifth year following the year of the filing date.

[12.6.2.202 NMAC - N, 7/1/2001; A, 6/30/2011]

12.6.2.212 ARCHIVES - GENERAL.

A. Paper UCC documents.
(1) Storage. Paper UCC records

are stored offsite at the state records center and archives.

(2) Retention. Six years after record is filed

B. Reductions.

(1) Storage. Paper UCC records received prior to January 1, 2001 are microfilmed. Paper UCC records received after June 30, 1998 are scanned to optical disc.

(2) Retention. Filing office has a copy of all microfilm rolls [since] created since 1986 as well as all optical discs created since July, 1998.

C. Databases. UCC data are copied to tape nightly and backup tapes are stored at the state records center and archives.

[12.6.2.212 NMAC - N, 7/1/2001; A, 6/30/2011]

End of Adopted Rules Section

This page intentionally left blank

Other Material Related to Administrative Law

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

NMAC Chapter Name Change

By request of the Human Services Department, the State Records Administrator considered and approved to change the name of Chapter 235 of Title 8 from "MEDICAID ELIGIBILITY - PREGNANCY AND/OR FAMILY PLANNING SERVICES (CATEGORY 035)" to "MEDICAID ELIGIBILITY - PREGNANCY OR FAMILY PLANNING SERVICES (CATEGORY 035)." This name change will take effect on July 1, 2011.

**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